

**NEGOTIATIONS OVERVIEW 2007**  
**TRANSPORT WORKERS' UNION, LOCAL 200**

Proposition E, Charter Section 8A.104(k) and 8A.104(l) gives the Municipal Transportation Agency (MTA) the authority to bargain its own separate collective bargaining agreement with labor organizations representing employees at MUNI in service critical classifications.

One labor agreement representing MUNI service critical employees expire on June 30, 2007: Transport Workers' Union (TWU), Local 200. As set forth in Proposition E, Charter Section 8A.104(l), MTA representatives entered into negotiations with this labor organization.

On May 23, 2007, an award was issued as a result of the interest arbitration between the MTA and TWU, Local 200.

Proposition E, Section 8A104(p) provides that the contents of such agreement and an analysis of costs associated with each agreement must be publicly disclosed for at least 30 days prior to adoption by the MTA Board.

Attached are redline version of the Collective Bargaining Agreement (CBA); summary of the changes to the previous CBA; an analysis of the cost impact over the term of the agreement; and a copy of the interest arbitration award for TWU, Local 200.



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Municipal Transportation Agency



MTA/MUNI/TWU LOCAL 200

**COLLECTIVE BARGAINING AGREEMENT**  
**BETWEEN**  
**THE MUNICIPAL TRANSPORTATION AGENCY**  
**AND**  
**THE TRANSPORT WORKERS' UNION, AFL-CIO**  
**LOCAL 200**

**FOR SERVICE CRITICAL CLASSIFICATIONS**  
**AT THE MUNICIPAL TRANSPORTATION AGENCY**

**July 1, 2006 2007- June 30, 2007 2009**

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## PREAMBLE

1. This Collective Bargaining Agreement (herein referred to as "CBA"), has been developed jointly by the San Francisco Municipal Railway (herein referred to as "MUNI"), under the authority of the Municipal Transportation Agency (hereinafter referred to as MTA), and the Transport Workers Union of America, AFL-CIO, Local #200 (hereinafter referred to as "Local 200").

## ARTICLE I - REPRESENTATION

### I.A. RECOGNITION

2. The MTA acknowledges that Local 200 has been certified as the recognized employee representative pursuant to the provisions of the Employee Relations Operating Resolution (EROR) for the following classifications and bargaining units:

1773	Media Training Specialist
7412	Automotive Service Worker Assistant Supervisor
8121	Fare Inspections Supervisor/Investigator
9135	Passenger Service Specialist
9139	Transit Supervisor I
9140	Transit Manager I
9141	Transit Manager II
9150	Train Controller
9160	Transit Operations Specialist
9173	Systems Safety Inspector
<b>9520</b>	<b><u>Transportation Safety Specialist</u></b>

3. The terms and provisions of this CBA shall also be automatically applicable to any classification which is accreted to an existing unit covered by this CBA during its term. This Agreement shall not automatically extend to new bargaining units for which Local 200 has gained representation or established a representative status through affiliations or service agreements. Said employees covered by the terms and provisions of this CBA are hereinafter referred to as "employee(s)," singular or plural as the context so indicates. The term "employee" as used hereinafter in this agreement refers to a person included in the above defined bargaining unit. Employees are presumed to have either supervisory and/or managerial positions.

### I.B. INTENT

4. The purpose of this CBA is to meet the foregoing parties' mutual responsibility to provide the public with dependable, prompt, safe, economical and courteous public transportation, consistent with the requirements, goals and intent of Proposition E (Charter section 8A.100 et seq.). MTA and Local 200 have negotiated this agreement in accordance with Section A8.409, et seq. of the San Francisco City Charter.

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5. It is the intent of the parties signatory hereto that the provisions of this CBA, upon ratification by the members of Local 200, shall bind Local 200 and its members.
6. It is the intent of the parties signatory hereto that the provisions of the CBA, upon ratification by the MTA Board as to those matters within the MTA Board's legal authority, shall bind the MTA as to those matters within the MTA's legal authority employing individuals covered by this Agreement.
7. The terms and conditions of employment for employees covered by this CBA shall be governed by the terms and conditions established by CITY Charter provisions, ordinances of the BOARD of Supervisors and/or the MTA Board of Directors, relevant rules of the CSC, MTA and MUNI, and by the terms and conditions of employment set forth in this CBA.
8. In the event provisions of this CBA are in conflict with the foregoing authorities, provisions of this CBA shall prevail to the fullest extent legally possible. Unless an existing ordinance, resolution, rule or regulation is specifically discussed and changed, deleted, or modified by the terms of this CBA, said ordinance, resolution, rule or regulation shall be deemed to remain in full effect.
9. **Duty to Meet & Confer.** Pursuant to the provisions of the Meyers-Milias-Brown Act, as amended, the MTA agrees to meet & confer, as required by law with Local 200 in advance regarding any proposed changes in working conditions within the scope of representation including but not limited to the bargainable impacts on the supervisors and managers covered by this CBA, including: changes in management structure, the process for the fair and equitable selection of training candidates, the scheduling of operations, reorganization plans, the implementation of AVM/ATCS, staffing, the prioritization of work assignments in the face of cutbacks in staffing, and changes in overtime recording procedures, the inclusion of 9139 and 9140 in capital projects, the acquisition of VDT equipment. The MTA shall attempt to provide any proposed changes to Local 200 in writing within fifteen (15) days before said changes are to go into effect (emergencies excepted). Within five (5) days of the receipt of the notice of proposed changes, Local 200 may request, in writing, a meeting and/or present the Department with any comments and suggestions it may have in writing concerning the proposed changes. The Department shall reply, in writing, within ten (10) days by scheduling a meeting, if so requested by Local 200, and by responding to Local 200's written comments.
10. As provided within the Charter, any matter not resolved by the parties through meet & confer during the term of this Agreement may not be submitted to arbitration. However, if the parties are unable to resolve any differences on the aforementioned issues, either party may request that the matter be considered by the Joint Labor Management Board.
11. The MTA Human Resources Division will be advised of and coordinate, if necessary, all meet & confer and be available to assist so that all provisions in the CBA will be followed.

#### **I.C. NO STRIKE PROVISION**

12. The Union and each member of the bargaining unit covenant and agree not to initiate, engage in, cause, instigate, encourage or condone a strike, work stoppage, slowdown, or

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absenteeism. The Union and each member of the bargaining unit covenant and agree not to engage in any form of sympathy strike including, but not limited to, observing or honoring the picket line of any other union or person.

**I.D. OBJECTIVE OF THE MTA AND ESSENTIAL ROLE PERFORMED BY SERVICE-CRITICAL CLASSES IN THE LOCAL 200 BARGAINING UNIT**

13. The most efficient, effective and courteous delivery of MTA services is of paramount importance to the MTA and its employees, and is recognized to be a mutual obligation of the parties to this CBA within their respective roles and responsibilities.

**I.E. MANAGEMENT RIGHTS**

14. All classifications included in the Local 200 bargaining unit are "service critical" as defined by Charter section 8.104(e).

15. The provisions of this MOU shall, in all respects, be interpreted in a manner which furthers the purposes of Proposition E (Charter section 8A.100 et seq., hereafter "Proposition E"). If Proposition E is amended during the term of this Agreement, the parties shall meet and confer to assess whether and to what extent the change in legislation warrants an amendment to this CBA. In addition, except as otherwise and specifically provided in this Agreement, in accordance with applicable state laws, nothing herein shall be construed to restrict any legal MTA rights concerning direction of its work force, or consideration of the merits, necessity, or organization of any service or activity provided by the MTA, including but not limited to the right to determine the mission of its constituent departments, officers, boards and commissions; set standards of services to be offered to the public; determine the methods, means and personnel by which the MTA's operations are to be conducted; exercise control and discretion over the MTA's organization and operations. The MTA may also relieve employees from duty due to lack of work or funds.

16. It is understood and agreed that except as specifically set forth in this agreement the MTA retains all of its powers and authority to manage municipal services and the work for performing those services.

17. The exercise of these rights shall not be subject to the grievance procedure. However, the exercise of such rights does not preclude employees from utilizing the grievance procedure to process grievances regarding the practical consequence of any such actions on wages, hours, benefits or other terms and conditions of employment specified in this Agreement.

**I.F. STEWARDS**

18. Local 200 may select one steward and/or alternate steward in each department or bureau or facility in which employees covered by this CBA are working. A steward shall only deal with grievances within or related to the steward's department, bureau or facility.

19. Local 200 shall furnish the MTA with an accurate list of shop stewards. Local 200 may submit amendments to this list at any time because of the permanent absence of a designated shop steward. If a shop steward is not officially designated in writing, by Local 200, none

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will be recognized. When employees are selected, substituted, or replaced as stewards, the organization's duly authorized representative shall inform in writing the department head or officer under whom each selected employee member is employed.

20. Local 200 and the MTA recognize that it is the responsibility of the shop steward to assist in the resolution of grievance or disputes at the lowest possible level.
21. While handling grievances, discipline, or meeting with the MTA representatives concerning matters affecting the working conditions and status of employees covered by this CBA, one shop steward shall be allowed time off during normal working hours to perform such duties without loss of pay; provided, however, that time off for investigation shall be reasonably related to the difficulty of the grievance. No steward shall leave the duty or work station or assignment without specific approval of the employee's department head or other authorized manager. Such release time for the shop steward shall not be unreasonably denied.
22. If, in the judgment of the supervisor, permission cannot be granted immediately to the shop steward to investigate or present a grievance during on-duty time, such permission shall be granted by the supervisor no later than the next working day from the date the shop steward was denied permission, unless the parties agree to an alternative time.
23. In handling grievances or disciplinary matters, the shop steward shall have the right to:
  24. Consult with the affected employee regarding the presentation of a grievance after the employee has requested the assistance or presence of the shop steward.
  25. Present to a supervisor a grievance, which has been requested by an employee or group of employees, for resolution or adjustment.
  26. Investigate any such grievance so that such grievance can be properly discussed with the supervisor or the designated representative.
  27. Attend meetings with supervisors or other MTA representatives when such meetings are necessary to adjust grievances or represent employees in disciplinary matters. In scheduling meetings, due consideration shall be given to the operating needs and work schedules of the department, division, or section in which the employees are employed. Release time for the shop steward shall not be unreasonably denied.
  28. In emergency situations, where immediate disciplinary action may be taken because of violation of law or a MTA or departmental rule (theft, etc.), the shop steward shall, if possible, be granted immediate permission to leave his/her post of duty to assist the employee.
  29. Shop stewards shall not interfere with the work of any employee.
  30. Stewards shall receive timely notice of departmental orientation sessions, and shall be permitted to make appearances at departmental orientation sessions, in order to distribute Local 200 materials and to discuss employee rights and obligations under this CBA.

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Local 200 and the Department may agree to other arrangements for contact between stewards and new employees.

31. Employee Representatives. Pursuant to the Meyers-Milias-Brown Act and Employee Relations Operating Resolution (EROR):
32. A. A reasonable number of officers, stewards and representatives of Local 200 may attend during working hours with no loss of pay, meetings scheduled with representatives of the MTA Appointing Officer for the purpose of meeting and conferring required by law.
33. B. Release time for meetings with MTA on other matters of employer/employee relations shall be limited to matters within the scope of negotiations or matters on which MTA has agreed to meet and consult.

#### **I.G. GRIEVANCE PROCEDURE & THE DISCIPLINE PROCESS**

34. In computing the time within which any action must be taken under the grievance and discipline process, Saturdays, Sundays and holidays shall not be counted.
35. The following procedures are adopted by the Parties to provide for the orderly and efficient disposition of grievances and are the sole and exclusive procedures for resolving grievances as defined herein.

##### Definition.

36. A Grievance shall be defined as any dispute which involves the interpretation or application of, or compliance with this agreement, including discipline and discharge of employees.

##### Definition and Filing of Grievances for MTA Service Critical Employees:

37. Grievances must be filed in writing on a Union Grievance Form. The grievance will set forth the facts of the grievance, the terms and conditions of the Agreement claimed to have been violated, misapplied or misinterpreted, and the remedy or solution being sought by the grievant. Grievances shall not be effective nor deemed filed unless they are filed with the MTA designated officials. Grievances involving multi-class or multi-mode/division disputes shall be first filed at Step 2.
38. In the event that the Union or the MTA intends to be represented by legal counsel at any meeting in the grievance process, the Union or the MTA shall notify all parties, including the employee and/or his or her counsel, in writing at least two (2) days in advance of the meeting. Notice by either the Union or the MTA of their intent to use legal counsel shall automatically entitle the other to use legal counsel, should they wish to do so. In the event the dispute reaches arbitration, the advance notice requirement will be ten (10) days for purposes of the arbitration.

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39. CSC Rule "Carve-outs" are not subject to the grievance procedure nor may be submitted to arbitration.

Time Limits for MTA Service Critical Employees:

40. Time limit extensions shall only be granted in exceptional cases, and must be agreed to in writing between the Union President and the MTA Labor Relations Manager. If MTA fails to meet the time limits at any point in Steps 1 and 2, the grievance shall be granted. If the Union fails to meet the time limits at Steps 1 and 2, the grievance will be withdrawn.
41. In grievances involving discipline, the time limits in the grievance procedure shall not be extended due to the absence of the grievant unless the grievant is unable to appear due to a serious, verifiable illness which precludes the grievant from attending a meeting, or is on authorized leave which was approved prior to the proposed discipline.

Economic Claims.

42. Any claim for monetary relief shall not extend more than thirty (30) days prior to the filing of a grievance. Though the resolution of disputes outside the Grievance Procedure is desired, it is understood by Local 200 that, in order to preserve its claims for monetary relief, it will file a grievance upon having knowledge of the aggrieved event, and should resolution outside the Grievance Procedure appear probable, request an abeyance of the Grievance Procedure time limits, as set forth above. The MTA will not unreasonably refuse a request for abeyance where settlement of an economic claim appears probable.

Grievance Initiation.

43. A grievance affecting more than one employee shall be filed with the management official having authority over all employees affected by the grievance.
44. Only Local 200 shall have the right on behalf of a disciplined or discharged employee to appeal the discipline or discharge action.

Steps of the Procedure.

45. An employee shall discuss the issue subject to grievance informally with his/her immediate supervisor, provided the issue is not a discrimination or retaliation claim against that supervisor, and try to work out a satisfactory solution in an informal manner as soon as possible, but in no case later than five (5) days from the date of the occurrence of the act or the date the employee might reasonably have been expected to have learned of the alleged violation being grieved or in the event of a Skelly process, no later than five (5) days after the date of the written Skelly decision. The employee may have a Local 200 representative present.

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Step 1: (Intermediate/Departmental Level).

46. If the issue is not resolved within seven (7) days after contact with the immediate supervisor, the employee will submit the grievance in writing to the 9143 Senior Operations Manager at the Division/Mode where the alleged violation and/or discipline occurred, or a Senior Operations Manager designated by the General Manager /**Chief Operating Officer** should one not be in place, no later than twenty (20) days after the facts or event giving rise to the grievance. Claims alleging sexual harassment may be filed within four (4) months. The grievance will be submitted on a mutually agreeable grievance form. The grievance will set forth the facts of the grievance, specific provision(s) and/or the terms and conditions of this Agreement claimed to have been violated, misapplied or misinterpreted, and the remedy or solution being sought by the grievant.
47. The Senior Operations Manager shall respond in writing within seven (7) days following receipt of the written grievance.

Step 2: (MUNI General Manager / Chief Operating Officer).

48. A grievant dissatisfied with the Senior Operations Manager's response at Step 1 may appeal to the MUNI General Manager /**Chief Operating Officer**, or designee, in writing, within seven (7) days of receipt of the Step 1 answer. The grievance shall contain copies of all earlier correspondence and materials, if any, reviewed at Step 1.
49. The MUNI General Manager /**Chief Operating Officer**, or designee, may convene a meeting within fifteen (15) days with the grievant and the Local 200 representative. The MUNI General Manager /**Chief Operating Officer**, or designee, shall respond in writing within fifteen (15) days of the meeting or receipt of the grievance, whichever is later.

Step 3: (MUNI MTA Human Resources Director).

50. A grievant dissatisfied with the General Manager /**Chief Operating Officer**'s response at Step 2 may appeal to the MTA Human Resources Director, or designee in writing, specifying the reason(s) why Local 200 is dissatisfied with the Step 2 response, within fifteen (15) days of receipt of the Step 2 answer. The grievance shall contain copies of all earlier correspondence and materials reviewed at the earlier steps. The MTA Human Resources Director or his or her designee, who has not been involved with the Grievance at Step 1 or 2, may convene a grievance meeting within fifteen (15) days with the grievant, and/or Local 200.
51. 1). Disciplinary Grievances. MTA Human Resources Director or designee, who has not been involved with the Grievance at Step 1 or 2, shall have fifteen (15) days after the receipt of the written grievance or if a meeting is held, fifteen (15) days after the meeting, whichever is later, to review and seek resolution of the grievance and respond in writing.
52. 2). Contract Grievances. MTA Human Resources Director or designee, who has not been involved with the Grievance at Step 1 or 2, shall have thirty (30) days after the receipt of the written grievance, or if a meeting is held, thirty (30) days after the

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meeting, whichever is later, to review and seek resolution of the grievance and respond in writing.

Arbitration Step 4.

53. If Local 200 is dissatisfied with the Step 3 response it may appeal by notifying MTA Human Resources Director, or designee, in writing, within thirty (30) days of its receipt of the Step 3 response that arbitration is being invoked.

Selection of Arbitrator – Non-Expedited

54. a. When a matter is appealed to arbitration the parties shall first attempt to mutually agree on an arbitrator. In the event no agreement is reached within five (5) days, the arbitrator shall be selected from a panel obtained through the State Mediation and Conciliation Service by alternately striking names from the list supplied by the SMCS. All members of the panel shall be members of the National Academy of Arbitrators.
55. b. The parties shall make every effort to schedule a hearing date within twenty (20) days.

Expedited Arbitration.

56. The parties agree to establish a panel of five (5) acceptable arbitrators who will handle expedited arbitrations sequentially. The Union shall request in writing that the expedited arbitration process be utilized. Within seven (7) days of receipt of a written request from the Union, the MTA shall canvass the panel for arbitrator availability sequentially and schedule the arbitration. In no event shall the arbitration be scheduled to take place in less than ten (10) days from the day of selecting the available arbitrator.
57. Authority of the Arbitrator (both regular and expedited). The decision of the arbitrator shall be final and binding, unless challenged under applicable law. The arbitrator shall have no authority to add to, ignore, modify or amend the terms of this Agreement.
58. Costs of Arbitration. The direct expenses of the arbitration including the fees and expenses of the arbitrator shall be borne and shared equally by the parties. The costs of a court reporter and the transcription of the proceeding, if any, shall be paid by the party requesting such, unless requested by the arbitrator, which will then be borne and equally shared by the parties. In the event that an arbitration is canceled resulting in a cancellation fee, the party initiating the request or causing the cancellation shall bear the full cost of the cancellation fee, unless the parties agree otherwise, which shall not be unreasonably withheld.
59. Date of Award. Awards shall be due, in writing, within forty-five (45) days following the receipt of closing arguments. As a condition of appointment to the permanent panel, arbitrators shall be advised of this requirement and shall certify their willingness to abide by these time limits.

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The Discipline Process.

60. The MTA shall have the right to discipline any non-probationary permanent employee, temporary civil service employee, or provisional employee upon completion of twelve (12)-months service, for just cause.
61. As used herein "discipline" shall be defined as written reprimands, written warnings, discharge, suspensions and disciplinary demotion. A change of work assignment, either to or from a particular assignment, may not be made solely for disciplinary purposes.
62. Any Local 200 employee assigning a classification 9163 Transit Operator to perform the work of a 9139 Transit Supervisor shall be subject to disciplinary action, except as provided under Article II.C. (paragraph 107), herein.
63. Employees who are released or disciplined during their initial probationary period or during any probationary period established by this CBA, may appeal the release or discipline provided that the grounds for the grievance or appeal shall be limited to a claimed violation of Article II.A. In such an appeal the employee shall bear the burden of proof with respect to the claimed violation.
64. No interview of an employee that may result in disciplinary action or at which discipline is to be imposed will be undertaken unless the employee is first advised of his/her right to representation. If requested by the employee, such representation must be secured within the succeeding twenty-four (24) hour period, excluding holidays and weekends. If the employee does not secure representation within such period, the right is waived.
65. Written reprimands, written warnings, suspensions, disciplinary demotions and discharges of non-probationary permanent employees, temporary civil service employees, or provisional employees with twelve (12)-months service, shall be subject to the following procedure:
  66. a. The basis of any proposed discipline shall be communicated in writing to the employee and to Local 200 no later than eighteen (18) days after management has attained findings on the event or occurrence which is the basis of the discipline, or the offense will be deemed waived. A charge against an employee shall contain the precise offense with which the employee is being charged.
  67. b. Except in emergency situations, where immediate disciplinary action must be taken because of a violation of law or a CITY or department rule (*theft, etc.*), no disciplinary action can be taken without first providing the employee and Local 200 with the written charges and the materials upon which the charges are based.
  68. c. The employee and her/his representative shall be afforded a reasonable amount of time to respond, either orally at a meeting ("Skelly meeting"), or in writing, to the management official designated by the MTA to consider the reply. Should the employee and her/his representative elect to respond orally at a Skelly meeting, the

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Department will notify the parties, in writing, at least five (5) days in advance of the meeting, unless mutually agreed otherwise by the parties. Local 200 shall have the right to be present at the Skelly meeting. The employee and her/his representative may present any relevant oral/written testimony and other supporting documentation as part of her/his response.

69. Individuals who may have direct knowledge of the circumstances relating to the discipline may be present at the request of either party at the meeting if the parties agree that the individuals' participation will facilitate an appropriate outcome. In the case of MTA employees giving relevant oral testimony, they shall be compensated at an appropriate rate of pay for time spent.
70. d. The employee shall be notified in writing of the decision based upon the information contained in the written notification, the employee's statements, and any further investigation occasioned by the employee's statements. The employee's representative shall receive a copy of this decision.
71. c. Progressive Discipline: For most offenses, management is expected to use a system or progressive discipline under which the employee is given increasingly more severe discipline each time an offense is committed. Management is not bound by progressive discipline in cases of serious offenses where no specific warning or prior disciplinary action need precede separation for cause. A common pattern may include oral warning, written warning, suspension, and finally, separation for cause.

### **I.H. DUES DEDUCTION /AGENCY SHOP**

72. Payroll deductions from the pay of employee(s) covered by this CBA for dues to be paid to Local 200 shall be made by the Controller in accordance with the Controller's regulations and the provisions of San Francisco Administrative Code Section 16.90 et seq. (Article V). The MTA agrees to transmit said funds to Local 200 once monthly to Local 200 headquarters. The MTA further agrees that it will check off and transmit to Local 200 Special Fund the amount specified monthly from the wages of those employee(s) who voluntarily authorize such contributions on the forms provided for that purpose by said fund. These transmittals shall occur monthly and shall be accompanied by a list of the employee(s) from whom such deductions have been made and the amounts deducted.

#### **Application**

73. For the term of this Agreement, all current and future employees of the MTA subject to the terms and conditions of this Agreement, except set forth below, shall, as a condition of continued employment, become and remain a member of the Union or in lieu thereof, shall pay an agency fee to the Union. Such agency fee shall not exceed the standard initiation fee, periodic dues and general assessments (hereinafter collectively termed membership fees) of the Union representing the employee's classification. The agency fee payment shall be established annually by the Union, provided that such agency shop fee will be used by the Union only for the purposes of collective

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bargaining, contract administration and pursuing matters affecting wages, hours and other terms and conditions of employment, to the extent allowed by law.

Religious Exemptions

74. If an employee in a classification covered by this Agreement sincerely holds religious beliefs that include conscientious objections to joining or financially supporting a labor organization, the employee shall not be required to pay the service fee. In lieu of paying the service fee, the employee shall pay a charitable contribution equal to the service fee to one of the three following charitable organizations: (1) United Way of the Bay Area, (2) Community Health Charities of California (San Francisco/East Bay Branch), or (3) Local Independent Charities. The charitable contribution shall be paid in the amounts and at the times the service fee would otherwise be paid if the employee were not exempt under this paragraph. The employee shall provide the MTA and Union with an acknowledgement of receipt from the charitable organization or other satisfactory evidence that the charitable contribution has been paid.

Payroll Deductions

75. a. The Union shall provide the MTA Human Resources Director and the City Controller with a complete list of the classifications subject to this Section represented by the Union and a current statement of membership fees. Such list of represented classifications and statement of membership fees shall be amended as necessary. The Controller may take up to 30 days to implement such changes. The Controller shall make required membership fee or service fee payroll deductions for the Union. Each pay period, the Controller shall make membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each affected employee.
76. b. Effective with the first complete pay period worked by an employee newly employed and subject to this Agreement and each pay period thereafter, the Controller shall make membership fee or service fee and initiation deductions, as appropriate, from the regular payroll warrant of each such employee. Nine (9) working days following payday the Controller will promptly pay over the Union all sums withheld for membership or service fees.
77. c. The Union shall be entitled to collect, through the payroll deduction method, membership dues, and any special membership assessments, and through that system, may make changes as may be required from time-to-time. The Union shall give the Controller appropriate written notice of any changes in existing deductions, or the establishment of new bases for deduction.

Service Fees

78. Service fees from nonmembers shall be collected by payroll deduction pursuant to Administrative Code Section 16.90. Failure to comply with this Section shall be grounds

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for termination. The Union, at its option, may elect to waive its right to demand termination and instead utilize judicial process to compel payment.

#### Employee Lists

79. The Controller shall also provide with each payment a list of employees paying service fees. All such lists shall contain the employee's name, employee number, classification, department number and the amount deducted.
80. If during the course of this agreement the Controller becomes capable of doing so, upon request by the Union, the MTA shall provide such list on computer diskette or other electronic medium. All reasonable costs associated with such request shall be paid to the MTA by the Union.
81. A list of all employees in represented classes shall be provided to the Union monthly. Nothing in this Section shall be deemed to have altered the MTA's current obligation to make insurance program or political action deductions when requested by the employee.

#### Financial Reporting

82. Annually, the Union will provide an explanation of the fee and sufficient financial information to enable the service fee payer to gauge the appropriateness of the fee. The Union will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker not chosen by the Union and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.

#### Indemnification

83. The Union agrees to indemnify and hold the MTA and the City harmless for any loss or damage arising from the operation of this section.

#### New Hires

84. The MTA agrees to provide the Union with the names and classifications of newly hired employees on a quarterly basis. The MTA will provide such new employees with information regarding the Union and agency shop.

#### Data

85. The MTA will provide the Union the following data, for each employee in the covered classifications, on a quarterly basis within legal and reasonable administrative constraints.

1. Name;
2. Employee Number;
3. Current Classification,

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86. Upon written request, the MTA agrees to provide to the Union, on an annual basis, gender information by job classification.
87. The Union shall comply with the requirements set forth in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) for the deduction of agency shop fees. Annually, the Union shall certify in writing to the City that the content of the written notice meets the requirements set forth in this section and in Hudson.

## **I.I. GENERAL INFORMATION**

88. As provided under Article III.D., the Department shall maintain all records of overtime worked by employee(s) in their respective divisions/departments. Copies of said records shall be made available to the representative of Local 200 upon request.
89. Notice of Occurrence of Industrial Accidents. Timely notice of the occurrence of an injury to any employee sustained in the course of his or her employment shall be given to Local 200. Information supplied may include the date of the accident or injury, corrective action taken, current status of employee, and the work location of the accident or injury. When an employee is hospitalized, Local 200 will be notified by telephone.

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## ARTICLE II - EMPLOYMENT CONDITIONS

### II.A. NON DISCRIMINATION

90. The MTA and Local 200 agree that this Agreement shall be administered in a nondiscriminatory manner. Specifically, no person covered by this Agreement shall be discriminated against because of race, color, creed, religion, sex, sexual orientation, gender identity, national origin, physical or mental disability, age, political affiliation or opinion or Local 200 membership or activity. Discrimination as used herein shall mean discrimination as defined by Title VII of the 1964 Civil Rights Act, as amended, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the California and United States Constitutions, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1866, Meyers-Milias-Brown Act and any other laws and regulation relating to employment discrimination.
91. A complaint of discrimination may, at the employee's option, be processed through the MTA's Equal Employment Opportunity complaint process, or federal or state administrative or judicial processes. If the employee elects to pursue a non-contractual remedy for discrimination, it shall constitute a waiver of the right to pursue that complaint through the grievance and arbitration procedure.

### II.B. AMERICANS WITH DISABILITIES ACT

92. The parties agree that they are required to provide reasonable accommodations for persons with disabilities in order to comply with the provisions of the Americans with Disabilities Act, the Fair Employment and Housing Act, and all other applicable federal, state and local disability anti-discrimination statutes and further agree that this agreement will not be interpreted, administered or applied in any manner which is inconsistent with said Act. The MTA reserves the right to take any action necessary to comply therewith.

### II.C. ASSIGNMENT OF WORK

93. The provisions of this agreement relating to the Assignment of Work will expire on June 30, 2007. Unless both parties mutually agree to extend or modify the Assignment of Work language in the agreement, the language will revert to the Assignment of Work language as of June 30, 2005.

94. 1. The purpose of the procedures set forth below Sign Ups here provided is to allow for a fair and equitable procedure for lateral movement for employees in the 9139 classification.

1. 9139 Assignments to Schedule Department, Training, Dispatch and Central Control Units ("CDST Units") 2. Polling and General Sign-Up (Classification 9139).

95. a. Every three years prior to conducting a General Sign up, employees in Class 9139 shall be given an opportunity to express their interest in positions in the Central Control, Dispatch, Schedules, and Training units ("CDST units"), by submitting a statement of interest in accordance with procedures adopted by MTA.

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96.

97. **Polling:**

- Vacancies in Streets and Metro Rail Operations (MRO) will be filled through current procedures.
- Vacancies in Scheduling, Safety & Training, Central Control, Station Operations and Dispatch will be filled through polling the following four (4) divisions: Streets, MRO, Station Operations and Dispatch.
- An employee who moves as a result of polling may not move again until the General Sign Up.

98. b. After soliciting expressions of interest, management shall assess interested candidates and shall notify each candidate of the resulting assessment. Management shall assign successful candidates to vacancies based on the experience(s), training, skills, work and employment history, seniority and needs of the service ("Assignment Criteria"). If the more senior candidate holds the minimum qualifications necessary to perform the job under the Assignment Criteria and wants the CDST assignment, management shall assign the individual the job.

99. c. Any employee who does not meet the qualifications under the Assignment Criteria for assignment to a CDST Unit shall receive a written explanation.

100. d. A performance appraisal program shall be operational before implementation of the polling and assessment process in ¶1a and b above. MTA will meet and confer with the Union to flesh out the elements of the Assignment Criteria. Until completion of these processes, the status quo shall prevail.

101. e. A joint training committee comprised of four (4) members of management and four (4) members selected by the Union, shall be formed to assist in developing and monitoring implementation of training addressing the needs of all 9139's.

102. f. The Union Management Meeting (UMM) Committee shall monitor implementation of sections 1(a) – (e).

103. g. When a vacancy arises in any CDST unit between solicitations of expression of interest, the Appointing Officer or designee may assign personnel based on the Assignment Criteria set forth in ¶1.b above from among any remaining available employees who most recently expressed interest, or if no such individuals are available, from the Civil Service Eligible list.

104. h. Any employee who does not receive a requested assignment or reassignment to a CDST unit shall receive a written explanation of the denial. Assignments and reassignments pursuant to paragraphs 1b and g shall be subject to expedited arbitration.

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2. 9139 Assignments to Stations Operations, Metro Rail Operations, Cable Car and Street Operations (SMCS Units)

105. There shall be a general sign-up every three (3) years for all assignments to SMCS Units. Positions shall be filled based on seniority. Movement between divisions as a result of the general sign-up will be phased in as appropriate to assure continuity.

106. Between general sign-ups, vacancies in SMCS Units will be filled through polling. After polling, management shall make assignments based on seniority.

107. General Sign Up (GSU):

- General Sign Up (Classification 9139): There shall be a general sign up within the 9139 classification once every three (3) years with the exception of persons assigned to the Schedule Department, Safety and Training, and Central Control. Movement among divisions as a result of the general sign up will be phased in over a one year period.
- The above listed divisions/groups (Schedule Department, Safety and Training, and Central Control) shall be limited to a turnover of fifty percent (50%) turnover rule. Movement as a result of polling in the period between General Sign Ups will be considered as part of the 50% limitation at the time of the GSU.

108. Sign-up Procedures and Shift Determination. The parties will meet & confer on an expedited basis, regarding each General Sign-Up, including job descriptions, designation and description of shifts, and the rules and procedures for the General Sign-Up. At least twenty-five (25) calendar days prior to the scheduled date for the sign-up, MUNI shall provide LOCAL 200 with a written summary of any changes planned by management. The parties shall begin the formal meet & confer process not less than twenty (20) days prior to the scheduled date for the General Sign-Up. Sign-ups will not be posted until after the meet & confer process is completed.

109. Posted Shifts. All shifts will be posted at least ten (10) days prior to the sign-up. At the same time, duties and responsibilities related to the Shifts will be posted along with the Shifts to which they refer.

110. Shift Premiums. Those Shifts which have pay premiums shall be so marked.

111. Sign-up for Shifts. Sign-up for a Shift shall be in direct seniority order as defined in Article II.H, except as to agreed upon exceptions that have previously been met and conferred on.

112. General Sign-up Procedures. Each employee shall have five (5) minutes to sign-up. If an employee will not be present, she or he can leave five (5) choices of assignment on the prescribed form or designate in writing a Local 200 representative to bid for

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her/him. If no choices have been made known, the following procedures will govern assignments:

113.
  - a. The employee will be assigned to the same position as occupied before the sign-up if that Shift is still open.
114.
  - b. The employee will be assigned the most similar available position in the same group or division with similar hours and days off.
115.
  - c. The employee will be assigned to another group or division with similar hours and days off.
116.
  - d. The employee will be assigned to the group or division where now working but to a shift with different hours and/or days off.
117.
  - e. The employee will be assigned by Management to any open position, preferably with similar type of equipment (surface, rail, etc.).
118. On Leave and Scheduled to Sign Up. Employees on personal leave, sick leave (including industrial), or special duty, who are scheduled to return to work on or before thirty (30) days following the date of the sign-up will be allowed to take part. Employees who are currently on leave must present a doctor's note of the projected date of return to work in person to the Appointing Officer or its designee within five (5) working days of the posting of the sign-up. Management will notify by mail all employees entitled to take part who are off on extended leaves of absence. Employees on leave who are not scheduled to return to duty within the prescribed time may not participate in the sign-up. When such individuals return to work, they will be assigned to an open position in any group or division, with preference given to seniority and to the same or like position from which they came.
119. Changing Assignments. Employees changing work assignments to another group or division and who require it will be trained in required aspects of the work of the new group or division.
120. Accepted Performance Levels. An employee who has signed up for a changed work assignment in another group or division and does not meet accepted performance levels within three (3) months, but has worked satisfactorily in another previously assigned worksite, may be allowed to return to the previously assigned work group or division.
121. Group Sign-up (9139's in All Units). Except during a general sign-up year, ~~There shall be a group sign-up once each year unless legitimate operational concerns require postponement of up to three (3) months. Management may conduct a group sign-up at such additional times as it deems necessary.~~ The group sign-up shall include the total number of 9139 positions for each group and will allow changes in shift hours, locations, and five day work assignments. Ten (10) days prior to posting, Local 200 will be given notice of any changes proposed and given an

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opportunity to discuss the changes. Proposed changes in duties and responsibilities and substantial changes in the proportion of shifts with weekend and night working shall be subject to the formal meet & confer process.

122. Medical transfers. The employee will provide the necessary documentation to the Department verifying the extent of the medical problem, the work limitations, and the expected duration of the disability. The employee may take a medical transfer to the new group or division going to the bottom of the Board until the next group sign-up.
123. **Waiting List between Sign Ups. At the time of a general Sign Up, a waiting list shall be established in seniority order for the Training and Schedules Departments. The list shall be used to fill vacancies in these departments occurring between Sign Ups.**
124. Relief Assignments. Relief assignments shall be filled as they become available by the most senior employee in the classification within the group on the departmental Vacation Relief list requesting the reassignment, consistent with the terms of Article II.H. Employees in relief assignments shall be offered, by seniority order, the reassignment to any permanent opening as it becomes available, providing the Department elects to fill the opening.
125. a. On Wednesday of each week, the shifts requiring relief assignments lasting at least one week starting the following week will be posted for sign-up from among those who have bid for relief positions. Such individual signing up for a shift shall maintain his/her bid for days off.
126. b. When, in the opinion of the Appointing Officer or its designee, exceptional circumstances require that the most senior person who bid for a particular shift is not allowed to cover that shift, the Appointing Officer or its designee shall inform Local 200, and at the request of Local 200, an immediate meeting will be held to review the reasons why the most senior person is not allowed to work the shift.
127. c. **Reassignment to a permanent opening occurring between sign ups will be offered, should the Department choose to fill the position, to those employees within the classification in the group on the relief assignment list in seniority order.**
128. Minimum Break between Relief Shifts and Block Shifts. The Department and Local 200 agree that changing work hours from day to night work during the course of a work week can affect the health and safety of employees and should be minimized to the extent possible. Except in emergencies, the Department shall make a best effort to arrange breaks of not less than nine (9) hours between the end of an assigned shift and the beginning of the next assigned shift within each week of five (5) consecutive work days.

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129. Short Term Reassignments for classifications 9139 and 9140. Short term temporary or emergency reassignments within a classification or to another classification necessary to maximize public service may not exceed 100 calendar days. The selection of employees for such reassignments shall be by seniority, provided the employee has the capacity to perform in that assignment, or can be trained for such assignment in fifteen (15) working days or less. In the event the employee is not fully trained within fifteen (15) working days after training has been provided, the Department may reassign the next senior employee.
130. No employee covered by this Agreement may assign classification 9163 Transit Operators to perform the work of classification 9139 Transit Supervisor, except in emergencies and then only for the duration of such emergency.
131. Assignment of 9140 Transit Manager I. Assignment of employees in classification 9140 to particular work duties and/or shifts shall be made by the Appointing Officer or its designee based on the skills, experience, good interpersonal relations and work record of each individual. Seniority shall control the assignment, however seniority shall not control the assignment, or be the single determining factor, if the skills, types of experience, good interpersonal relations and work record of the less senior candidate are considerably better suited, based upon these criteria, to achieve important operational objectives. The Appointing Officer or its designee may reassign persons at any time based on these criteria.
132. Reassignments may also occur as a result of vacancies in the 9140 class. Any 9140 employee interested in an open position shall request in writing that he or she be considered. Such reassignments shall be made within the criteria stated above.
133. Central Control Staffing. Adequate staffing at Central Control on weekends requires a person to work the 10 am to 6 p.m. shift. In the absence of such a person, the Transit Manger I will work the consoles during break schedules.
134. Assignment of 7412 Automotive Service Worker Assistant Supervisor. Automotive Service Worker Assistant Supervisors may bid for shifts or locations by seniority, including newly created or vacant positions. When a 7412 fills a position as a result of a bid, he or she may not bid for another position until one year has elapsed, except when the Department, at its discretion, decides to change a position to another location or shift. A 7412 whose position is changed would have an opportunity to bid into any other 7412 position based upon seniority.
135. As appropriate, and, in the sole discretion of the Appointing Officer or its designee, a 7412 shall be assigned to each shift and shop where five (5) or more 7410's are working.
136. The parties have agreed, in principle, that the Transit Manager II classification is an appropriate classification to manage the divisions. This provision shall not

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supersede nor is intended to alter the authority of the Civil Service Commission in determining classification issues.

#### **I.I.D. PERSONNEL FILES AND OTHER PERSONNEL MATTERS**

137. There shall be maintained only one official personnel file for an employee, and the employee shall have access to the file to review the file during normal working hours, upon reasonable request. The personnel files for employees covered by this CBA shall be maintained at the Personnel Office.
138. No material may be entered into the official personnel file without knowledge of the employee and a copy being given to him/her. An employee will have the option to sign, date and attach a response to material entered in his/her personnel file within thirty (30) days of his/her having knowledge of the entry. Discipline involving less than a suspension may not be considered for subsequent disciplinary actions after twelve (12) months. Discipline involving a suspension of five (5)-days or less may not be considered for subsequent disciplinary actions after eighteen (18) months. Discipline involving a suspension of greater than five (5)-days may not be considered for subsequent disciplinary actions after thirty-six (36) months. Discipline resulting from a chemical dependency violation may not be considered for subsequent disciplinary actions after sixty (60) months. Subject to the approval of the Civil Service Commission, the employee may request, in writing, that any disciplinary documents that may no longer be considered, as described above, be removed from his/her personnel file. In addition, this provision shall not apply to employees disciplined for: misappropriating public funds or property, misusing or destroying public property, using illicit drugs at work or being under the influence of illicit drugs or alcohol at work, mistreating other persons, engaging in acts that would constitute a felony or misdemeanor involving moral turpitude, engaging in acts that present an immediate danger to the public health and safety, or engaging in immoral acts.
139. Standards of Performance. Local 200 recognizes the MTA's right to establish and/or revise performance levels, norms, or standards. Such standards, developed by usual work measurement procedures, may be used to determine acceptable performance levels, prepare work schedules, and to measure the performance of each employee or group of employees.
140. Employee(s) who work at less than acceptable levels of performance may be subject to disciplinary measures.
141. Consistent with the Meyers-Milias-Brown Act and Article I.B., herein, the MTA agrees to meet & confer with Local 200 to discuss the effect of an implementation of revised performance levels, norms or standards. However, employee performance evaluations may not be grieved or submitted to arbitration.

#### **I.I.E. PERSONAL SERVICES CONTRACT**

142. Personal Services Contracts. No personal service contracts shall be approved by the MTA for work which normally is, or which can be, performed by employees or eligibles for Civil Service classifications covered by this CBA without first meeting and conferring with

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Local 200, consistent with Article I.B. herein, and subject to approval of the Civil Service Commission.

## II.F. EDUCATION AND CAREER DEVELOPMENT

143. Equal Access to Training Opportunities. Other than training required by management, access to training opportunities shall be provided equitably to all employees who indicate their willingness to participate in such training. As provided under Article I.B., the Appointing Officer, or its designee, and Local 200's representatives will meet & confer to develop the process for the fair and equitable selection of training candidates.
144. Notice of Training Opportunities. The Appointing Officer, or its designee, shall post announcements of all training opportunities affecting positions within Local 200's jurisdiction in a mutually agreeable, accessible location.
145. Review of Training and Promotional Opportunities. Any employee(s), with the assistance of Local 200, may discuss the issue of training opportunities and future potential promotion with the appropriate representative of the Department.
146. EEO Training. The Department will offer training to managers and supervisors in the area of equal employment opportunity and discrimination.
147. MTA Employees shall be offered a minimum of twenty (20) hours of job related training each year. Training will be at the discretion of the Appointing Officer. In recognition of the importance of Homeland Security and contingent upon availability of Federal Funding, security training will be given top priority.

## H.G. JOINT COMMITTEES

### Joint Labor Management Board (JLMB)

148. Both Union and management agree that problems should be resolved expeditiously at the lowest possible administrative level and that effective communications and collaborative problem-solving is conducive to creating and maintaining a positive work environment. This in turn enhances employee morale, increases productivity and improves customer service. The parties agree to establish an Operations Division Joint Labor Management Board ("JLMB"). The JLMB shall consist of an equal number of Union and management representatives to be determined by the parties. The purpose of the JLMB shall be to provide the parties with a forum for discussion of important non-contractual matters of mutual concern including: formulation of major management policies that affect the Local 200 membership, the effects of budgetary reductions on the Division, major restructurings of the Division, employee training and education, establishment of new civil service classifications, health and safety issues. The JLMB will be charged with acknowledging the topics of concern as enumerated in Article IV.A. (Health & Safety), herein. The JLMB shall jointly plan and recommend programs and/or solutions to problems in these areas. The JLMB shall meet at least monthly, or on the call of either party, and shall make a good faith effort to resolve issues brought before the JLMB. Matters presented

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to the JLMB may not be grieved or submitted to arbitration, except as provided by law. Disciplinary grievances and matters involving the claims of individual employees shall not be presented to the JLMB. However, the consideration of an issue by the JLMB shall not preclude an employee from pursuing a grievance relating to such issue regarding any action by management that otherwise constitutes a violation of this CBA. Matters that appear on the agenda and are not resolved after two (2) consecutive meetings shall be dropped or forwarded to the UMM for consideration, unless continued by mutual agreement.

#### Operations Division Union/Management Meetings (UMM):

149. Both Union and management agree that problems should be resolved expeditiously and at the lowest possible administrative level. The parties agree to establish an Operations Division Union/Management Meeting to address unresolved, non-contractual issues affecting employees represented by the Union that have not been resolved through the JLMB process. This UMM forum shall consist of an equal number of Union and management representatives to be determined by the parties. Representatives from other departments may be requested to attend the UMM regarding matters on the agenda which are relevant to their functions. The UMM shall meet at least quarterly, or on the call of either party, and shall make a good faith effort to resolve issues brought before the UMM. Matters presented to the UMM may not be grieved or submitted to arbitration, except as provided by law. Disciplinary grievances and matters involving the claims of individual employees shall not be presented to the UMM. However, the consideration of an issue by the UMM shall not preclude an employee from pursuing a grievance relating to such issue regarding any action by management that otherwise constitutes a violation of this CBA. Matters which appear on the agenda and are not resolved after two (2) consecutive meetings shall be dropped, unless continued by mutual agreement.

#### **II.H. SENIORITY**

150. Seniority, for the purpose of this Article, is defined as the length of continuous service determined from the day of certification to a permanent position in a classification as described in Article I.A.
151. For classification 7412, seniority shall control in the filling of vacancies within a classification by reassignment and the assignment of shifts, days off and overtime. Seniority for classification 9139 in respect to assignment and reassignment is addressed in Article II.C.
152. Employees covered by this CBA permanently promoted to another classification or receiving any non-permanent appointment may retain their seniority in their original classification in case of return to that position within one (1) year. After one year, promoted employees returning to their original classification shall return to the level of seniority reached at the time of their promotion.
153. Seniority for the purposes of vacation sign-ups shall be computed on the basis of the date of hire with the CITY and County of San Francisco. Where there are more than one employee with the same date of hire, the date of hire in the classification and the position on the Civil Service list shall determine the order for sign-up.

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## **II.I. PROBATIONARY PERIOD**

**154.** The probationary period shall be one year, as defined and administered by the Civil Service Commission.

## **II.J. ANTI-NEPOTISM**

**155.** No employee of the Municipal Transportation Agency shall knowingly sign up or bid for an assignment that reports directly to or directly supervises the employee's spouse, domestic partner, parent or child. MTA management shall not knowingly assign an employee to such a position. If an employee is in such a position on July 1, 2001, or, if changes occur that cause an employee to be in such a position during the term of this Agreement (including but not limited to organizational restructuring, changes in familial relationships, or changes in reporting relationships caused by operation of the Civil Service rules), the following shall occur: the first represented employee of the two affected employees who has an opportunity to sign up, bid for, or be assigned to a different assignment for which he or she possesses the appropriate qualifications shall be required to do so. This provision is not intended to affect the rights of any employee under the Civil Service rules.

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## **ARTICLE III - PAY, HOURS AND BENEFITS**

### **III.A. WAGES**

156. Effective July 1, 2006, represented employees who are members of SFERS shall receive a base wage increase of seven percent (7%) in exchange for their agreement to pay the seven and a half percent (7.5%) of the required employee retirement contribution amount to SFERS.
157. Effective January 1, 2007, an across the board increase of two and a half percent (2.5%) shall be conferred.
158. Effective April 5, 2008, an across the board increase of two percent (2.0%) shall be conferred.
159. Effective April 4, 2009, an across the board increase of three and three quarters percent (3.75%) shall be conferred.
160. Wage adjustments shall be effective in the pay period closest to the effective dates.
161. All base wage increases shall be rounded to the nearest salary grade.

#### **Internal Adjustments**

162. Effective July 1, 2007, there shall be a one-time two percent (2%) internal adjustment for employees in Class 9140 Transit Manager I, Class 9141 Transit Manager II and Class 8121 Fare Inspections Supervisor/Investigator.

### **III.B. COMPENSATION FOR VARIOUS WORK SCHEDULES**

163. Normal Work Schedule. The normal work day is a tour of eight (8) hours to be completed in nine (9) hours. The normal work week is a tour of duty on each of five (5) consecutive days.
164. Any employee(s) may choose to work a daily shift, where such a shift may be offered, consisting of not more than ten (10) hours. Said employee(s) must then have a tour of duty consisting of four (4) consecutive days of work and three (3) consecutive days off. Overtime shall be paid for all work in excess of ten (10) hours daily and/or forty (40) hours weekly.
165. Compensation fixed herein on a per diem basis are for a normal eight hour work day; and on a bi-weekly basis for a bi-weekly payroll period of service consisting of a normal work schedule.

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166. For the purpose of computing hours of work, work time will include: (1) all regularly scheduled work required by the job; (2) in addition to (1), above, all work performed at the request of the employee(s)' supervisor or manager; (3) time spent by designated representatives of Local 200 in meetings pursuant to Employee Relations Ordinance Section 16.219; (4) time spent by a designated representative of Local 200 representing employee(s) covered by this CBA in the grievance procedure; (5) time spent in court appearances while conducting business related to the Department; (6) time spent on jury duty.
167. An employee who is required to serve on a jury or report to Court for jury duty on her/his regular day off shall be considered to have the following Saturday as an assigned day off if the regular day off lost was Monday or Tuesday, and shall be considered to have Sunday as an assigned day off if the regular day off lost was Wednesday, Thursday or Friday.
168. Statutory holidays shall be counted as hours actually worked.
169. All compensation shall be calculated upon the hours actually worked proportionate to the compensation for a normal work schedule.
170. Fulltime MTA employees on approved sick pay, vacation or compensatory time off shall be given the option of receiving either eight (8) hours pay or an amount equivalent to their regularly scheduled shift hours, from their sick or vacation credits or compensatory time earned balances.

### **III.C. ADDITIONAL COMPENSATION**

171. The MTA and Local 200 agree that the following rates of premium pay shall apply to those positions agreed by the parties to be eligible for premium pay. All premium pay shall be for hours actually worked. Premiums shall be calculated against the employee's base rate of pay and may not be pyramided.
172. 1. NIGHT DUTY  
NIGHT DUTY EMPLOYEES shall be paid eight and one-half percent (8.5%) more than the base rate for each hour actually worked between 5:00 p.m. and 12:00 a.m. (swing), except for those employees working a normal shift in excess of eight (8) hours per day that requires work between the hours of 5:00 p.m. and 12:00 a.m. Employees working at least five (5) hours of their regular shift between 5:00 p.m. and 12:00 a.m. shall receive the 8.5% differential for the entire shift. Night shift premium shall be paid only for days and hours actually worked, as set forth above, except for statutory holidays and vacation days.
173. Employees shall be paid ten percent (10%) more than the base rate for each hour actually worked between 12:00 a.m. and 7:00 a.m. (graveyard), except for those employees working a normal shift in excess of eight (8) hours per day that requires work between the hours of 12:00 a.m. and 7:00 a.m. Employees working at least five (5) hours of their regular shift between 12:00 a.m. and 7:00 a.m. shall receive the 10% differential for the entire shift. Night shift premium shall be paid only for days and hours actually worked, as set forth above, except for statutory holidays and vacation days.

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2. STANDBY PAY AND PAGER PAY

174. Employees who, as part of the duties of their positions are required by the Appointing Officer to stand by when normally off duty to be instantly available on call for immediate emergency service for the performance of their regular duties, shall be paid twenty-five (25%) percent of their regular straight time rate of pay for the period of such standby service, except that employees shall be paid ten (10%) percent of their regular straight time rate of pay for the period of such standby service when outfitted by the Department with an electronic paging device. When such employees are called on to perform their regular duties in emergencies during the period of such standby service, they shall be paid while engaged in such emergency service the usual rate of pay for such service as provided herein. Notwithstanding the general provisions of this section, standby pay shall not be allowed in classes whose duties are primarily administrative in nature.
175. No employee shall be compensated for standby service unless the Appointing Officer or its designee assigns said employee to such standby service.

3. SPECIAL SKILLS / DUTIES

176. a. Central Control Pay. After certification, all employees working in Central Control shall receive an increase of one-half step on the salary grade (2.5%).
177. b. Safety and Training and Scheduling Pay. Employees in classification 9139 assigned to the Safety and Training Department and Scheduling Department shall receive a training premium of One Dollar and Fifty cents (\$1.50) per hour but such premium shall be payable only for days and hours actually worked.
178. c. Saturday and Sunday Premium for Class 7412 Automotive Service Worker Assistant Supervisors. When Saturday is worked as part of the scheduled forty (40) hour work week, it shall be paid at the straight time rate, with an additional premium of six percent (6%) of the base rate. When Sunday is worked as part of the scheduled forty (40) hour work week, it shall be paid at the straight time rate, with an additional premium of ninety-four percent (94%) of one-half (1/2) of the base rate.

4. LEAD PERSON PAY

179. Employees occupying positions designated by the Appointing Officer, or its designee, as a lead person position shall receive a Lead Person premium of One dollar and Fifty cents (\$1.50) per hour, payable only for days and/or hours actually worked.

5. SHIFT DIFFERENTIAL (For Class 7412 only)

180. For any shift immediately following a regular day shift or commencing during any period of a day shift shall be considered a night shift and employees working on such shift shall be paid ten percent (10%) above the regular day shift as set forth herein. A subsequent shift shall be known as a midnight shift and shall be paid fifteen percent (15%) above the regular

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day rate. Night and midnight Shift Differential premiums shall be paid only for days and hours actually worked except for statutory holidays and vacation days.

#### 6. BILINGUAL PAY

181. Employees who are assigned by their Department to a "designated bilingual position" for ten (10) or more hours biweekly shall be granted additional compensation of \$35.00 biweekly. Any employee assigned to a "designated bilingual position" who translates forty (40) or more hours biweekly shall be granted an additional \$15.00 biweekly, making a total of \$50.00 biweekly. A "designated bilingual position" is a position designated by the Department which requires translating to and from a foreign language including sign language used by the hearing impaired and Braille for the visually impaired.

#### 7. AUTOMOBILE ALLOWANCE AND TRANSPORTATION

182. Employees at the Municipal Transportation Agency (MTA) who are required in writing to use their personal vehicle for MTA business (including employees who have received written authorization to utilize their personal vehicle as a street corner shelter) and who receive parking tickets for overtime parking at parking meters when they are unable to place money in the parking meters while on duty in the field shall be reimbursed for no more than three (3) parking tickets per covered employee per fiscal year of this agreement. Employees requesting reimbursement shall be required to submit documentation in a form designated by Department management demonstrating that: (1) the citation was issued for overtime parking at a parking meter; (2) the citation was issued at a time and location when the employee was acting in the course and scope of his/her employment in the field; (3) the reason why the employee was precluded by his/her job duties from putting change into the meter in a timely manner.

183. Employees required to use their own vehicles for MTA Business shall be reimbursed for mileage at the rate allowed by the IRS during the term of this CBA.

#### Driver's License Reimbursement

184. MTA employees in service for one year or more and whose job assignments include maintaining a valid Class B California Driver's License and/or a Verification of Transit Training (VTT) Certificate shall be reimbursed for the renewal fees of such licenses.

#### 8. ACTING ASSIGNMENT PAY

185. Employees assigned by the Appointing Officer or its designee to perform a substantial portion of the duties and responsibilities of a higher classification shall receive compensation at a higher salary if all of the following conditions are met:

186. a. the assignment shall be in writing;
187. b. the position to which the employee is assigned must be a budgeted position.

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188. c. the employee is assigned to perform the duties of a higher classification for longer than eleven (11) consecutive working days, retroactive to the first day of the assignment.
189. d. Upon written approval by the Appointing Officer or its designee, an employee shall be paid at a step of the established salary grade of the higher class which is at least five percent (5%) above the employee's base salary but which does not exceed the maximum step of the salary grade of the class to which temporarily assigned. Premiums based on percent of salary shall be paid at a rate which includes out of class pay.
190. e. Requests for classification or reclassification review shall not be governed by this provision.
191. Where the above requirements are satisfied but an employee does not receive a premium, the employee must file a grievance within thirty days of written notice of the assignment.
192. Emergency Transit Manager I Assignments. In case of an emergency (a situation occurring unexpectedly and which cannot be planned for), a 9139 supervisor may be assigned to fill the shift of a 9140 Manager. She or he shall receive the pay of a 9140 retroactive to the first day if in the position for five (5) consecutive days or more.

## 9. SUPERVISORY DIFFERENTIAL ADJUSTMENT

193. The MTA Department of Human Resources may adjust the compensation of a supervisory employee whose compensation grade is set herein subject to the following conditions:
  194. The supervisor, as part of the regular responsibilities of his/her class, supervises, directs, is accountable for and is in responsible charge of the work of a subordinate or subordinates.
  195. The supervisor must actually supervise the technical content of subordinate work and possess education and/or experience appropriate to the technical assignment.
  196. The organization is a permanent one approved by the Department, Board or Commission, where applicable, and is a matter of record based upon review and investigation by the MTA Department of Human Resources.
  197. The classifications of both the supervisor and the subordinate are appropriate to the organization and have a normal, logical relationship to each other in terms of their respective duties and levels of responsibility and accountability in the organization.
  198. The compensation grade of the supervisor is less than one full step (approximately 5%) over the compensation grade, exclusive of extra pay, of the employee supervised.
  199. The adjustment of the compensation grade of the supervisor shall not exceed five (5%) percent over the compensation exclusive of extra pay, of the employee supervised.

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200. If the application of this section adjusts the compensation grade of an employee in excess of his/her immediate supervisor, the pay of such immediate supervisor shall be adjusted to an amount one dollar (\$1) bi-weekly in excess of the base rate of his/her highest paid subordinate, provided that the applicable conditions of this section are also met.
201. In no event will the MTA Department of Human Resources approve a supervisory salary adjustment in excess of two (2) full steps (approximately 10%) over the supervisor's current basic compensation. If in the following fiscal year a salary inequity continues to exist, the MTA Department of Human Resources may again review the circumstances and may grant an additional salary adjustment not to exceed two (2) full steps (approximately 10%).
202. The MTA Human Resources Department shall review any changes in the conditions or circumstances that were and are relevant to the request for salary adjustment under this section either acted upon by or pending before the MTA Human Resources Director.

#### 10. OTHER ADDITIONAL COMPENSATION

203. On-the-job and Ride-Along Training. Employees assigned to perform on-the-job training for other employees in their classification shall receive a training premium of \$3.00 per hour but such premium shall be payable only for days and hours actually worked. Employees who have volunteered to perform ride-along training for 9163 Transit Operators shall receive the \$3.00 per hour premium for the days and hours actually worked on such assignment.
204. Corner Books. If corner books are required of supervisors working at street locations and are not provided by Department, Department and LOCAL 200 shall meet & confer upon request of LOCAL 200 within thirty (30) days of the ratification of this CBA by the Board of Supervisors as to the reasonable compensation to be paid to supervisors for the time necessary to prepare such corner books.
205. Employee(s) covered by this CBA, their spouses/registered domestic partners and legally dependent children under nineteen (19) years of age who are living with said employee(s), shall be furnished with system passes pursuant to rules presently in effect at Department covering Department operators. Retired employee(s) shall be provided with system passes for the remainder of their lives.

#### 11. SAFETY DIVISION INSTRUCTOR PREMIUM

206. Safety Division Instructors shall receive a premium of \$5.00 per day when required to perform accident determinations.

#### 12. MTA INCENTIVES – FOR SERVICE CRITICAL EMPLOYEES AT MTA

207. Consistent with Proposition E (Charter Section 8.A.100), the MTA and the Union agree to reward employees for the attaining of various service, performance and attendance goals as set forth herein in Appendix A. The compensation provisions of Appendix A are hereby incorporated by reference into this CBA.

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### **13. COMMENDABLE ATTENDANCE PAYMENT – PILOT PROGRAM**

208. Effective July 1, 2007, employee(s) covered by this CBA who meet all of the requirements of the Commendable Attendance Pilot Program will be entitled to an annual payment of \$350 if they meet the eligibility requirements as follows:
209. a. Employees must actually have worked 1880 hours, exclusive of overtime hours, in the previous fiscal year (2006 – 2007).
210. b. Employees must have no discipline of a suspension or higher during the previous fiscal year.
211. c. Employees must be currently employed in the bargaining unit at time of payout, or, employees who separate from city service after July 1 but before the October payout and who separate with services satisfactory, shall receive their payment by mail. Employees must provide a valid mailing address at time of separation.
212. d. Payment to take place the second full pay period in October 2007.
213. This is a pilot program. Continuation into 2008 is contingent upon a five percent (5%) annual increase in the number of qualifying employees.
214. Note: The 1880 hours will include the following: Regular scheduled work hours, legal holidays, jury duty, and military leave.

### **III.D. OVERTIME COMPENSATION & COMP. TIME**

215. 1. Overtime and Comp Time Calculation. Except as set forth in Article III.B., time worked in excess of eight (8) hours per day or forty (40) hours per week shall be designated as overtime and shall be compensated at one-and-one-half times the base hourly rate which may include a night differential if applicable. Employees shall not be entitled to overtime compensation for work performed in excess of specified regular hours until they exceed eight (8) hours per day or forty (40) hours per week; provided that employees, if any, working in an alternative work schedule shall be entitled to overtime as provided by III. B. 2. Overtime shall be calculated and paid on the basis of the total number of straight-time hours actually worked in a day and week except that statutory holidays, including floating holidays and furlough days, shall be considered time worked.
216. One (1) day of vacation taken within a scheduled workweek shall be considered as time worked for the purposes of calculating overtime earnings. Multiple days vacation taken within a scheduled workweek shall not be considered as time worked for the purposes of calculating overtime earnings.

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217. a. Employees occupying Fair Labor Standards Act ("FLSA") exempt positions, including positions designated by the CITY as "Z" classifications in the Annual Salary Ordinance, shall not be paid for overtime worked but shall be granted compensatory time off at the rate of one and a half times the hours worked, only if the overtime worked has been approved in advance.
218. b. Employees covered by the FLSA (non-Z) who are required to work overtime shall be paid at a rate of one and one-half times the regular base rate, unless the employee and the Appointing Officer mutually agree that in lieu of paid overtime, the employee shall be compensated with compensatory time off.
219. c. No Appointing Officer shall require an employee not designated by a "Z" symbol in the Annual Salary Ordinance to work overtime when it is known by said Appointing Officer that funds are legally unavailable to pay said employee, provided that an employee may voluntarily work overtime under such conditions in order to earn compensatory time off at the rate of time and one-half, pursuant to the provisions herein.
220. d. Compensatory time shall be earned at the rate of time and one half. Employees occupying non "Z" designated positions shall not accumulate a balance of compensatory time earned in excess of 240 hours calculated at the rate of time and one half.
221. e. Employees working overtime during premium pay time shall receive overtime pay based on the premium rate.
222. f. Non-emergency overtime shall be distributed equitably among employee(s) who have current experience in and capacity for the work required, and who indicate their willingness to participate in such work.
223. g. Recordation Of Overtime. All overtime worked which is authorized by the Appointing Officer shall be recorded on separate timerolls. Compensation for overtime worked as provided in this Section shall be paid on an hourly basis. When improved methods of payroll processing are implemented and with the approval of the MUNI Human Resources Director and the Controller, such overtime may be recorded on the regular timerolls. The Department shall maintain all records of overtime worked by employee(s) in their respective divisions/Departments. Copies of said records shall be made available to the representative of Local 200 upon request.
224. h. Overtime Earned ("O.E."). When an employee covered by this CBA is transferred from one group to another within Department, the accumulated "overtime earned" time shall be transferable by the employee to be used in his or her new position.
225. 1). Employees wishing to use OE time must submit the request for the time off in writing not later than 12 noon of the fifth working day

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- preceding the employee's regular start of shift of the day for which time off is requested.
226. 2). A roster of those employees requesting days off will be maintained by the Department or group manager and will be available to Local 200 for review.
227. 3). The request shall be granted unless an emergency situation exists or the time off would cause severe personnel shortages as determined by the Appointing Officer or its designee.
228. 4). Up to ten percent (10%), but not more than two (2) non "Z" employees per group or Department may be granted time off at the same time, and no more than one "Z" employee per group or Department may be granted time off at any one time. However, "Z" employees may not take time off under this section without the agreement of the Appointing Officer or its designee, if the time off would cause more than fifty percent (50%) of the normal complement of employees in the group or Department to be absent.
229. 5). The first employee to submit a request in a group or Department will take precedence if more than one employee has requested time off at the same time.
230. 6). Requests for time off lasting more than three (3) days must be approved by the group or Department manager.
231. 2. Working on Regular Day Off ("RDO"): Employees desiring to work on their regular day off must indicate their availability by signing up on the RDO list. Employees shall first be called from the RDO list, based upon a rotational selection process giving all signees equal opportunity.
232. An employee called in to work on a regular day off from the RDO list shall be paid for each hour actually worked, but in no instance will (s)he be provided with less than eight (8) hours of work on that day.
233. If an employee is passed over incorrectly in the RDO rotation pursuant to procedures established by the Department, (s)he will be moved to the top of the list established for their next RDO.
234. An employee called in to work on a regular day off who did not elect to sign the RDO list shall be paid for each hour actually worked, but in no instance will (s)he be provided with less than eight (8) hours of work on that day

RDO Procedures:

235. a. Supervisors shall be offered RDO overtime by equal rotation.

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- 236. b. Supervisors requesting work shall submit request for work form no later than 48 hours prior to day desiring to work.
- 237. c. The RDO overtime log shall be kept up to date detailing requests and shifts worked. The overtime log will be posted and a copy sent to Local 200.
- 238. d. Rotations shall be computed on a sign-up to sign-up basis and include all 9139's in that section. All work in sections will be rotated.
- 239. e. All personnel in a section who indicate their willingness to work RDO overtime shall be trained in each different aspect of the group policies, type of work and shifts, including special events. Training will take place commencing with the 9139 General Sign-up or within ninety (90) days.
- 240. f. Supervisors requesting to work a type of RDO work and later refusing to work the shift offered within that time frame shall go to the bottom of the list for that type of work, i.e. night work, special events, etc.
- 241. g. No overtime work shall be assigned to a person in another section if there are people in that section willing to work.
- 242. h. These procedures are intended to cover the equal opportunity for RDO overtime work. The appropriate logs shall be kept for each type of work. No supervisor shall be moved to the bottom of the list for refusing to work any shift other than that in the time frame requested.
- 243. i. The Department can fill any shift of five (5) or more hours but less than eight hours in its sole discretion. In the event that the shift is to be filled from the RDO, such opportunities shall be distributed equally and fairly.

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### III.E. HOLIDAYS AND HOLIDAY PAY

244. The following paid holidays shall be observed:
- New Year's Day  
Martin Luther King, Jr.'s Birthday  
President's Day  
Memorial Day  
Independence Day  
Columbus Day  
Labor Day  
Thanksgiving Day  
Day After Thanksgiving  
Veterans Day  
Christmas Day
245. Provided further, if January 1, July 4, November 11 or December 25 falls on a Sunday, the Monday following is a holiday, and if it falls on a Saturday, the Friday before is a holiday as defined herein. In addition, any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States shall be deemed a holiday for this purpose.
246. The MTA shall accommodate religious belief or observance of employees as required by law.
247. Eligibility for Payment. employee(s) not scheduled to work on a paid legal holiday as listed above will be paid for that holiday provided that he/she is on paid status the work day immediately preceding and the work day immediately following the holiday. Payment shall consist of eight (8) hours straight time.
248. Holiday Worked. employee(s) (in non-Z classifications) scheduled to work on a paid legal holiday as listed above shall receive time and one-half for the hours worked, plus the rate of pay as stated in Article III.E.3. herein. employee(s) may elect to receive compensatory time off, computed at the rate of time and one-half in lieu of monetary payment for time worked on paid holidays.
249. Employees in "Z" classifications shall receive eight hours holiday pay and in addition shall receive compensatory time off at the rate of one-and-a-half (1-1/2) times for work on the holiday
250. Assignment of Class 9139. On holidays, if the 9139 shift is scheduled to work that day (dependent on the holiday tables used: Saturday, Sunday or Weekday), the 9139 assigned to work that shift shall work on that holiday. If that shift is not scheduled to work, the 9139 assigned to that shift will be off for the holiday. Vacation relief and block personnel who are detailed on holidays shall be considered to be off on holidays.
251. MUNI may excuse any 9139 scheduled to work under the following conditions:

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222. a. Unit managers will poll their units to determine who wants to work and who does not. Unit managers will attempt to accommodate 9139's desiring to be excused from work and to fill their shifts with relief or block supervisors who are scheduled to work and want to work the shift. Seniority shall control if there are more 9139's wanting to be excused, or wanting to work, than slots available.
223. b. Block personnel who are detailed on holidays shall be scheduled for holiday work ahead of the relief board.
224. c. Block and relief supervisors will be assigned holiday shifts that become open in seniority order, giving preference to those who want to work.
225. d. When departments or groups normally scheduled to be closed on holidays have work that needs to be performed on a holiday, that work will be offered in seniority order to the 9139 supervisors wanting to work that holiday.
226. Holidays That Fall On A Saturday. For those employees assigned to a work week of Monday through Friday, and in the event a legal holiday falls on Saturday, the preceding Friday shall be observed as a holiday; provided, however, that except where the Governor declares that such preceding Friday shall be a legal holiday, each Department head shall make provision for the staffing of public offices under his/her jurisdiction on such preceding Friday so that said public offices may serve the public. Those employees who work on a Friday which is observed as a holiday in lieu of a holiday falling on Saturday shall be compensated as provided in Article III.E.3., herein.
227. Holiday Pay For Employees Laid Off. An employee who is laid off at the close of business the day before a holiday who has worked not less than five (5) previous consecutive work days shall be paid for the holiday.
228. Employees who regularly work a minimum of twenty (20) hours in a bi-weekly pay period shall be entitled to holidays as provided herein on a proportionate basis.
229. Floating Holidays. In addition to the holidays listed herein, the employees covered by this CBA will receive five (5) floating holidays. Only employees working a Normal Work Schedule, as described in Article III.B., will receive five (5) floating holidays. The five (5) floating holidays may be taken on days selected by the employee subject to prior scheduling approval of management. Employees must complete six (6) months continuous MTA service to establish initial eligibility for the five (5) floating holidays. The five (5) floating holidays may not be carried forward from one fiscal year to the next. No compensation of any kind shall be earned or granted for the five (5) floating holidays if not taken off except as set forth below. The five (5) floating holidays shall not be considered holidays for purposes of calculating holiday compensation for time worked.

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230. **Effective July 1, 2007, employees will be eligible to participate in a buy back of their Floating Holidays if they meet the following conditions:**

231. **If at the end of the "Qualifying Period" defined as the previous fiscal year, a full-time employee who has not used more than forty (40) hours of sick leave, with or without pay, and or Disability Leave, and in addition has not been absent from work due to a disciplinary suspension may convert floating holiday hours to "cash". The payout will be considered earnings for the purposes of retirement calculations to the extent allowable by the Charter. Floating holiday compensation is eight hours straight.**

### **III.F. SALARY STEP PLAN AND SALARY ADJUSTMENTS**

232. Appointments to positions in the MTA shall be at the entrance rate established for the position except as otherwise provided herein.

#### **1. Promotive Appointment In A Higher Class**

233. An employee or officer who is a permanent appointee following completion of the probationary period or 2,080 hours of permanent service, and who is appointed to a position in a higher classification, either permanent or temporary, deemed to be promotive by the MTA's Department of Human Resources shall have his/her salary adjusted to that step in the promotive class as follows:

234. a. If the employee is receiving a salary in his/her present classification equal to or above the entrance step of the promotive class, the employee's salary in the promotive class shall be adjusted to two steps in the compensation grade over the salary received in the lower class but not above the maximum of the salary range of the promotive classification.
  235. b. If the employee is receiving a salary in his/her present classification which is less than the entrance step of the salary range of the promotive classification, the employee shall receive a salary step in the promotive class which is closest to an adjustment of 7.5% above the salary received in the class from which promoted. The proper step shall be determined by the bi-weekly compensation grade and shall not be above the maximum of the salary range of the promotive class.
  236. c. If the appointment deemed promotive described above is a temporary appointment, and the employee, following a period of continuous service at least equal to the prescribed probationary period is subsequently given another appointment either permanent or temporary, deemed promotive from the prior temporary appointment class, the salary step in the subsequent promotive appointment shall be deemed promotive in accordance with sections herein.
237. For purpose of this Section, appointment of an employee as defined herein to a position in any class the salary grade for which is higher than the salary grade of the employee's class shall be deemed promotive.

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2. Non-Promotive Appointment

238. An employee or officer who is a permanent appointee following completion of the probationary period or 2,080 hours of permanent service, and who accepts a non-promotive appointment in a classification having the same salary grade, or a lower salary grade, the appointee shall enter the new position at that salary step which is the same as that received in the prior appointment, or if the salary steps do not match, then the salary step which is immediately in excess of that received in the prior appointment, provided that such salary shall not exceed the maximum of the salary grade. Further increments shall be based upon the seniority increment anniversary date in the prior appointment.

3. Appointment Above Entrance Rate

239. Upon the request of the Appointing Officer, appointments may be made at any step in the compensation grade upon recommendation of MTA Human Resources Director under the following conditions:

240. a. A former permanent MTA employee, following resignation with service satisfactory, is being reappointed to a permanent position in his/her former classification; or
241. b. Loss of compensation would result if appointee accepts position at the normal step; or
242. c. A severe, easily demonstrated and documented recruiting and retention problem exists, such that all city appointments in the particular class should be above the normal step; and
243. d. The Controller certifies that funds are available. To be considered, request for adjustment under the provisions of this Section must be received in the offices of the MTA Department of Human Resources not later than the end of the fiscal year in which the appointment is made.
244. e. When the MTA Human Resources Director approves appointments of all new hires in a classification at a step above the entrance rate, the MTA Human Resources Director may advance to that step incumbents in the same classification who are below that step.

4. Reappointment Within Six Months

245. A permanent employee who resigns and is subsequently reappointed to a position in the same classification within six (6) months of the effective date of resignation shall be reappointed to the same salary step that the employee received at the time of resignation.

5. Compensation Adjustments

246. a. Prior Fiscal Year. When an employee promoted to a higher class during a prior fiscal year receives a lesser salary than if promoted in the same class and from the same grade step during the current fiscal year his/her salary shall be adjusted on July

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- 1, to the rate he/she would have received had he/she been promoted in the current fiscal year.
247. The MTA Department of Human Resources is hereby authorized to adjust the salary and anniversary increment date of any employee promoted from one class to a higher classification who would receive a lesser salary than an employee promoted at a later date to the same classification from the same salary step in the same base class from which the promotional examination was held.
248. b. Salary Increase in Next Lower Rank. When a classification that was formerly a next lower rank in a regular civil service promotional examination receives a salary grade higher than the salary grade of the classification to which it was formerly promotive, the MTA Department of Human Resources shall authorize a rate of pay to an employee who was promoted from such lower class equivalent to the salary he/she would have received had he/she remained in such lower class, provided that such employee must file with the MTA Department of Human Resources an approved request for reinstatement in accordance with the provisions of the Civil Service Commission rule governing reinstatements to the first vacancy in his/her former classification, and provided further that the increased payment shall be discontinued if the employee waives an offer to promotion from his/her current classification or refuses an exempt appointment to a higher classification. This provision shall not apply to offers of appointment which would involve a change of residence.
249. The special rate of pay herein provided shall be discontinued if the employee fails to file and compete in any promotional examination for which he/she is otherwise qualified, and which has a compensation grade higher than the protected salary of the employee.
250. c. Continuation of Salary Step Plan Earned Under Temporary Appointment. When an employee is promoted under temporary appointment to a higher classification during a prior fiscal year and is continued in the same classification without a break in service in the current fiscal year, or is appointed to a permanent position in the same classification, such appointment shall be in accordance with the provisions of this agreement, provided that the salary shall not be less than the same step in the salary grade the employee received in the immediately prior temporary appointment.
251. d. Credit for Temporary Service. A temporary employee, one with no permanent status in any class, certified from a regular civil service list who has completed six months or more of temporary employment within the immediately preceding one year period before appointment to a permanent position in the same class shall be appointed at the next higher step in the salary grade and to successive steps upon completion of the six months or one year required service from the date of permanent appointment. These provisions shall not apply to temporary employees who are terminated for unsatisfactory services or resign their temporary position.
252. e. Salary Anniversary Date Adjustment. Permanent employees working under provisional, exempt or temporary appointments in other classifications shall have

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their salary adjusted in such other classifications when such employees reach their salary anniversary date in their permanent class.

**6. Compensation Upon Transfer Or Re-Employment.**

253. a. Transfer. An employee transferred in accordance with Civil Service Commission rules from one Department to another, but in the same classification, shall transfer at his/her current salary, and if he/she is not at the maximum salary for the class, further increments shall be allowed following the completion of the required service based upon the seniority increment anniversary date in the former Department.
254. b. Reemployment in Same Class Following Layoff. An employee who has acquired permanent status in a position and who is laid off because of lack of work or funds and is re-employed in the same class after such layoff shall be paid the salary step attained prior to layoff.
255. c. Reemployment in an Intermediate Class. An employee who has completed the probationary period in a promotive appointment that is two or more steps higher in an occupational series than the permanent position from which promoted and who is subsequently laid off and returned to a position in an intermediate ranking classification shall receive a salary based upon actual permanent service in the higher classification, unless such salary is less than the employee would have been entitled to if promoted directly to the intermediate classification. Further increments shall be based upon the increment anniversary date that would have applied in the higher classification.
256. d. Reemployment in a Formerly Held Class. An employee who has completed the probationary period in an entrance appointment who is laid off and is returned to a classification formerly held on a permanent basis shall receive a salary based upon the original appointment date in the classification to which the employee is returned. An employee who is returned to a classification not formerly held on a permanent basis shall receive a salary in accordance with this agreement.

**III.G. METHODS OF CALCULATION**

257. An employee whose compensation is fixed on a monthly basis shall be paid monthly or bi-weekly in accordance with State Law or other applicable provision. There shall be no compensation for time not worked unless such time off is authorized time off with pay.
258. Conversion to Bi-Weekly Rates. Rates of compensation established on other than a bi-weekly basis may be converted to bi-weekly rates by the Controller for payroll purposes.

**III.H. SENIORITY INCREMENTS**

259. Entry At The First Step. Full time employees shall advance to the second step upon completion of six months service and to each successive step upon completion of the one year required service.

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260. Entry At Other Than The First Step. Employees who enter a classification at a rate of pay at other than the first step shall advance one step upon completion of the one year required service. Further increments shall accrue following completion of the required service at this step and at each successive step.
261. Date Increment Due. Increments shall accrue and become due and payable on the next day following completion of required service as an employee in the class, unless otherwise provided herein.
262. Exceptions. An employee shall not receive a salary adjustment based upon service as herein provided if he/she has been absent by reason of suspension or on any type of leave without pay (excluding a military, educational, or industrial accident leave) for more than one-sixth of the required service in the anniversary year, provided that such employee shall receive a salary increment when the aggregate time worked since his/her previous increment equals or exceeds the service required for the increment, and such increment date shall be his/her new anniversary date; provided that time spent on approved military leave or in an appointive or promotive position shall be counted as actual service when calculating salary increment due dates.
263. When records of service required for advancement in the step increments within a compensation grade are established and maintained by electronic data processing, then the following shall apply: An employee shall be compensated at the beginning step of the compensation grade plan, unless otherwise specifically provided for in this CBA. employees shall receive salary adjustments through the steps of the compensation grade plan by completion of actual paid service in total scheduled hours equivalent to one year or six months, whichever is applicable.
264. Paid service for this purpose is herein defined as exclusive of any type of overtime but shall include military or educational leave without pay.
265. An employee who (1) has completed probation in a permanent position, (2) is "Laid Off" from said position, (3) is immediately and continuously employed in another classification with the MTA either permanent or temporary, and (4) is thereafter employed in his/her permanent position without a break in service, shall, for the purposes of determining salary increments, receive credit for the time served while laid off from his/her permanent position.

### **III.I. WORKERS COMPENSATION LEAVE**

266. An employee who is absent because of an occupational disability and who is receiving Temporary Disability, Vocational Rehabilitation Maintenance Allowance, State Disability Insurance, may request that the amount of disability indemnity payment be supplemented with salary to be charged against the employee's accumulated unused sick leave with pay credit balance at the time of disability, compensatory time off, or vacation, so as to equal the normal salary the employee would have earned for the regular work schedule. Use of compensatory time requires the employee's Appointing Officer's approval.

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267. An employee who wishes not to supplement, or who wishes to supplement with compensatory time or vacation, must submit a written request to the Appointing Officer or designee within seven (7) calendar days following the first date of absence. Disability indemnity payments will be automatically supplemented with sick pay credits (if the employee has sick pay credits and is eligible to use them) to provide up to the employee's normal salary unless the employee makes an alternative election as provided in this section.
268. Employee supplementation of workers compensation payment to equal the full salary the employee would have earned for the regular work schedule in effect at the commencement of the workers compensation leave shall be drawn only from an employee's paid leave credits including vacation, sick leave balance, or other paid leave as available. An employee returning from disability leave will accrue sick leave at the regular rate and not an accelerated rate.
269. Salary may be paid on regular time-rolls and charged against the employee's sick leave with pay, vacation, or compensatory time credit balance during any period prior to the determination of eligibility for disability indemnity payment without requiring a signed option by the employee.
270. Sick leave with pay, vacation, or compensatory time credits shall be used to supplement disability indemnity pay at the minimum rate of one (1) hour units.
271. The parties agree, therefore, that this provision clarifies and supercedes any conflicting provision of the Civil Service Commission Rules bargainable and arbitrable under Charter section A8.409, et seq.

#### Return To Work

272. The MTA will make a good faith effort to return employees covered by this CBA who have sustained an occupational injury or illness to temporary modified duty within the employee's medical restriction. Duties of the modified assignment may differ from the employee's regular job duties and/or from job duties regularly assigned to employees in the injured employee's class. Where appropriate modified duty is not available within the employee's classification, on the employee's regular shift, and in the employee's Department, the employee may be temporarily assigned pursuant to this section to work in another classification, on a different shift, and/or in another Department, subject to the approval of the Appointing Officer or designee. The decision to provide modified duty and/or the impact of such decisions shall not be subject to grievance or arbitration. Modified duty assignments may not exceed three (3) months. An employee assigned to a modified duty assignment shall receive their regular base rate of pay and shall not be eligible for any other additional compensation (premiums) and or out of class assignment pay as may be provided under this agreement.
273. The MTA reserves the right to take any action necessary to comply with its obligations under the Americans with Disabilities Act, the Fair Employment and Housing Act and all other applicable federal, state and local disability anti-discrimination statutes. Requests for

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accommodation under the ADA or FEHA shall be governed under separate MTA procedures established under those laws.

### **III.J. STATE DISABILITY INSURANCE (SDI)**

274. All employees in the bargaining unit(s) covered by this Agreement shall be enrolled in the State Disability Insurance (SDI) Program. The cost of SDI will be paid by the employee through payroll deduction at a rate established by the State of California Employment Development Department.

### **III.K. HEALTH AND WELFARE**

#### **1. EMPLOYEE HEALTH CARE**

275. Health Service System Contributions. MTA shall contribute to the City Health Service System for each employee covered by this CBA who is a member of the Health Service System such sums as are required by the CITY Charter. The MTA agrees to maintain its contribution for health benefits at the current levels for the life of the agreement.

276. Medically Single. For "medically single" employees, i.e., benefited employees not receiving the contribution paid by the MTA for dependent health care benefits, the city shall contribute all of the premium for the employee's own health care benefit coverage.

#### **2. LIFE INSURANCE.**

277. A life insurance policy of \$50,000 with a permanent total disability benefit provision, subject to the conditions and provisions of said policy, shall be provided for all employees covered by this CBA the full premium cost of which shall be paid for by MUNI. Coverage shall be suspended for an employee who has been off the payroll and been absent from service for a continuous period of twelve months.

278. Eye Examinations. For all covered employees required to use VDTs on average at least two (2) hours per day, MUNI will provide a base line eye examination at the Occupational Safety and Health facility ("OSH"), followed by an eye examination at OSH every two years.

#### **3. DEPENDENT HEALTH CARE PICK-UP**

279. Amount of Employee Contribution to be Paid by the MTA: The MTA shall contribute \$225 per month per employee to provide for dependent coverage for employees with one or more dependents. However, in the event that the cost of dependent care exceeds \$225 per month, the MTA will adjust its pick-up level up to 75% of the cost of Kaiser's dependent health care medical premium coverage for the employee plus two or more dependents category.

#### **4. DENTAL COVERAGE**

280. Each employee covered by this agreement shall be eligible to participate in the City's dental program.

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## 5. CONTRIBUTIONS WHILE ON UNPAID LEAVE

281. As set forth in Administrative Code section 16.701(b), covered employees who are not in active service for more than twelve (12) weeks shall be required to pay the Health Service System for the full premium cost of membership in the Health Service System, unless the employee shall be on sick leave, workers' compensation, mandatory administrative leave, approved personal leave following family care leave, disciplinary suspensions, or on a layoff holdover list where the employee verifies they have no alternative coverage.

## **III.L. RETIREMENT**

282. Effective July 1, 2006, represented employees who are members of SFERS agree to pay their own employee retirement contribution in an amount equal to seven and one-half percent (7.5%) of covered gross salary. For employees who became members of SFERS prior to November 2, 1976 (Charter Section A8.509 Miscellaneous Plan), the MTA shall pick up the remaining one-half percent (0.5%) of the total eight percent (8%) employee retirement contribution to SFERS.
283. If it is determined through the voter process or through CITY action as a result of negotiations with any other Miscellaneous bargaining unit (as described by Charter section A8.409) to improve retirement benefits for other Miscellaneous employees, such improvements shall be extended to employees covered by this Agreement. The effective date for such improvements to Local 200's retirement benefits shall be the date such improvement are ratified in the other Miscellaneous employees' collective bargaining agreement.
284. The MTA Agrees to participate, on behalf of service critical employees at the Municipal Railway, in any City meet and confer process with TWU, Local 200 over a possible Charter amendment to enhance miscellaneous retirement benefits. As set forth in Charter Section A8.409-5, the parties acknowledge that this paragraph is not subject to Charter Section A8.409's impasse resolution procedures.

### Retirement Seminar

285. Subject to development, availability and scheduling by SFERS, employees shall be allowed not more than one day during the life of this CBA to attend a pre-retirement planning seminar sponsored by SFERS.
286. Employees must provide at least two-week advance notice of their desire to attend a retirement planning seminar to the appropriate supervisor. An employee shall be released from work to attend the seminar unless staffing requirements or other Department exigencies require the employee's attendance at work on the day or days such seminar is scheduled. Release time shall not be unreasonably withheld.
287. All such seminars must be located within the Bay Area.
288. This section shall not be subject to the grievance procedure

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### III.M. PILOT WELLNESS INCENTIVE PROGRAM

289. Effective July 1, 2002, any fulltime employee leaving the employment of the city upon service or disability retirement may receive payment for a portion of sick leave earned but unused at the time of separation.
290. The amount of this payment shall be equal to two and one-half percent (2.5%) of sick leave balances earned but unused at the time of separation times the number of whole years of continuous employment times an employee's salary rate, exclusive of premiums or supplements, at the time of separation. Vested sick leave hours, as described by CSC rules, shall not be included in this computation.

291. For example:

Employee A retires with 20 years of service.

Employee A has a sick leave balance of 500 hours

Employee A has a base salary rate of \$50.00 per hour at the time of separation.

Wellness Incentive = 2.5% for each year of service \*20 years of service = 50%

50% \*500 hours = 250 hours

250 hours \*\$50.00 (base salary rate at time of separation) = \$12,500.00

292. The number of hours for which an employee may receive cash payment shall not exceed one thousand forty (1040) including any vested sick leave hours.
293. The wellness incentive bonus shall not be considered as part of an employee's compensation for the purpose of computing retirement benefits.

### III.N. LEAVES OF ABSENCE

294. Those portions of the Civil Service Commission Rules applicable to Leaves, which are negotiable and arbitrable pursuant to Charter Sections A8.409 et seq., may not be changed during the term of this Agreement except by mutual consent. Those matters within the jurisdiction of the Civil Service Commission are not subject to grievance or arbitration.

#### Bereavement Leave

295. Three (3) days' leave with pay shall be allowed to each employee for a death as defined in the Civil Service Commission Rule regarding Bereavement Leave which includes but is not limited to mother, father, registered domestic partner, sister, brother, husband, wife, son and daughter, mother-in-law, father-in-law, aunt, uncle and dependent relatives living in the employee's home.

### III.O. CHILD CARE AND DCAP

296. The MTA and Local 200 agree that employees covered by this CBA will be eligible to participate in any childcare programs made available to all MTA employees.

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Dependent Care Reimbursement Account (DCAP)

297. The MTA shall continue to offer a flexible spending account for Dependent Care Reimbursement (DCAP) which allows employees to establish a “pre-tax” account of up to \$5,000 per year to reimburse dependent care costs.

Parental Release Time

298. Represented employees shall be granted paid release time to attend parent teacher conferences of four (4) hours per fiscal year (for children in kindergarten or grades 1 to 12).

299. In addition, an employee who is a parent or who has child rearing responsibilities (including domestic partners but excluding paid child care workers) of one or more children in kindergarten or grades 1 to 12 shall be granted unpaid release time of up to forty (40) hours each fiscal year, not exceeding eight (8) hours in any calendar month of the fiscal year, to participate in the activities of the school of any child of the employee, providing the employee, prior to taking the time off, gives reasonable notice of the planned absence. The employee may use vacation, floating holiday hours, or compensatory time off during the planned absence.

**III.P. LONG TERM DISABILITY INSURANCE**

300. The MTA, at its own cost, shall provide to employees a Long Term Disability (LTD) benefit that provides, after a one hundred and eighty (180) day elimination period, sixty percent salary (60%) (subject to integration) up to age sixty-five (65). Employees who are receiving or who are eligible to receive LTD shall be eligible to participate in the City's Catastrophic Illness Program as set forth in the ordinance governing such program.

**III.Q. TUITION REIMBURSEMENT**

301. The MTA agrees to allocate six thousand dollars (\$6,000) per each year of this agreement to the Tuition Reimbursement Program for the exclusive use of classifications represented hereunder. Employees in said classifications may not receive more than (\$500) per fiscal year from this special allocation. If any portion of said allocation remains unexpended on June 30<sup>th</sup> of any fiscal year, it shall be carried over to the next fiscal year. The Union shall be sent a quarterly report of the persons who have applied for tuition reimbursements, purpose of reimbursement, and monies allocated.

302. Eligibility: Any regularly scheduled Employee within the MTA service who has served a minimum of one (1) year of continuous service in any class immediately prior to receipt of application may apply for tuition reimbursement. Such reimbursement shall be for training courses pertaining to the duties of a higher classification or for the purpose of improving performance in the present classification when such courses are offered by an accredited educational institution.

303. Expenses: The MTA will reimburse each eligible Employee up to \$500 annually for tuition, books, supplies, and other fees for such course if attendance has been approved in advance. The MTA will attempt to make such payment promptly upon the Employee's submission of

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proof of satisfactory completion of the course with a passing grade. If the course is not graded, or is not a credited course, an official transcript or other official document shall be deemed evidence of satisfactory completion.

304. Pre-Approval: Application for reimbursement shall be prepared on a form provided by the MTA Department of Human Resources. Courses require pre-approval by the MTA Department of Human Resources and the Appointing Officer (or designee), neither of which shall be unreasonably denied. Such application for tuition reimbursement shall be made prior to the date of enrollment in the course and, if approved by MTA Department of Human Resources and the Appointing Officer (or designee), reimbursement shall be subject to successful completion of the course. No reimbursement shall be made if the Employee is eligible to receive reimbursement for said tuition under a federal or State Veterans benefit program from other public funds.
305. Repayment: If an employee resigns from the City within two (2) years following completion of the training course, the amount of tuition reimbursement shall be repaid by the Employee to the MTA by cash payment or out of the Employee's last pay warrant or, if applicable retirement earnings.

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## ARTICLE IV - WORKING CONDITIONS

### IV.A. HEALTH & SAFETY

306. The MTA acknowledges that State law requires every employer to provide a safe, healthy work environment for its employees. The MTA agrees to take all steps within its power to meet this responsibility for the employees covered by this CBA.
307. Joint Safety Committee. Health and Safety issues shall be presented to and addressed at the Joint Labor Management Board (JLMB"), as described in Article II.G. (Joint Committees).
308. For health and safety matters of immediate concern, the JLMB, at the call of either party, shall designate a Joint Safety Committee (hereafter termed "JSC") composed of one person appointed by Local 200 and one person appointed by the Appointing Officer, or its designee. The JSC shall meet within five (5) days of the call of the JLMB. If one party refuses or fails to meet when a meeting is called, the other party may proceed with the selection of an independent, neutral committee member, who shall be knowledgeable in the field of health and safety and who shall serve as chairperson, and the JSC shall commence its activities. The cost of the independent chairperson shall be split between Department and Local 200. The JSC shall consider and propose action on any aspect of Department operations affecting the health and safety of employees covered by this CBA. If any action proposed by a majority of the members of the JSC is not implemented, subject to the budgetary and fiscal provisions of the Charter, the JSC is authorized to take reasonable steps to publish, at Department's expense, its findings and proposed action.
309. Health and safety issues to be considered by the JLMB shall include, but not be limited to, ergonomics, use of MTA owned vehicles, shelters for street corner locations, use and inspection of video display terminals, chemical compounds, and use of personal vehicles for shelters during inclement weather.
310. MTA Owned Vehicle Check Procedure. The representatives from Local 200 and MUNI will review all street management vehicles to assess their operable conditions. A list will be established and maintained of all these vehicles and their maintenance status. The Defect Reporting form, as mutually developed by the parties, shall be used by the street supervisor for the chronicling of vehicle defects. Each street supervisor who uses any MTA vehicles will be responsible for filling out a daily defect form regardless of whether a defect is noted or not. Group Managers or their designees will be responsible for reporting defects to Equipment Maintenance for corrective action. Group Managers will also be responsible for keeping records on defects and when the problem is corrected. Supervisors will not be required to operate vehicles with critical defects and should be assigned another vehicle. Both parties agree that priority for new Operations Division vehicles shall be given to the groups for street management. No vehicles shall be sent out on the street after 6:00 p.m. without working heaters and defrosters. Local 200 will receive a copy of the maintenance status report of the defect cards.
311. Shelters for Street Supervisors. The parties agree that there is a continuing need for shelters for Street Supervisors.

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312. Parking Problems. Local 200 and MUNI agree to meet with the Department of Parking and Traffic in order to address the ongoing Street Supervisor and Central Control parking problems.
313. Use of Personal Vehicles as Shelters. If no shelter or MUNI automobile is available for use by a Street Supervisor, those supervisors may use their personal vehicles for shelter subject to the following conditions: (a) all lines under the supervisor's direction are visible from the vehicle; (b) the vehicle is legally parked (whenever possible); (c) during inclement weather; and (d) while writing required written reports. At no time may the supervisor sit in a vehicle when the lines being supervised are in difficulty. It is understood that sitting in a personal vehicle under the above described conditions is an option available to the supervisor. It is not a requirement and therefore the use of one's personal vehicle is done so at the risk of the supervisor. Supervisors needing to use their personal vehicles as shelters shall be issued the official MUNI Supervisor on Duty placards.

#### **IV.B. UNIFORMS & EQUIPMENT**

314. Full and appropriate uniforms shall be supplied to all employee(s) who are required by MUNI to wear uniforms on duty. In addition to full uniforms, all employee(s) who are required by their duties to work outdoors shall not be required to perform their normal work duties in the rain, wind or cold without being provided adequate foul-weather gear. The MTA agrees to provide all required safety equipment (i.e., protective eyewear, protective footwear) in compliance with Cal-OSHA regulations.
315. Female employee(s) shall be provided with an appropriate female uniform equivalent to that furnished to male employee(s).
316. Uniform items will be replaced by MUNI when they become unserviceable. A complete uniform set will consist of: two (2) jackets; one (1) long sleeved sweater; one (1)sleeveless sweater; two (2) ties or scarves; four (4) pairs of trousers or skirts; five (5) shirts or blouses; and one (1) hat.
315. Foul-weather gear, appropriate for both male and female sizes, shall consist of the following items in a pool set aside for those requiring said items: one (1) foul-weather jacket; one (1) pair foul-weather trousers; one (1) warm outer jacket; and one (1) cold weather hat.
316. The Appointing Officer or its designee shall continue to meet and confer with Local 200 regarding the concept of safety with regard to TS uniforms.
317. For 7412 Automotive Service Worker Assistant Supervisor, the MTA agrees to provide one (1) clean pair of protective coveralls each working day to each employee. The cost of coveralls and laundering of the same shall be paid by the MTA. The employee is responsible for safeguarding coveralls issued to him/her and will be held responsible for the value of any coveralls lost, stolen or damaged beyond fair wear and tear. Evidence of forced entry to an employee locker will be grounds for relieving an employee of responsibility for stolen coveralls. Responsibility for losses of individual sets of coveralls will be determined by the worker's supervisor on a case-by-case basis.

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CBA BETWEEN THE MUNICIPAL TRANSPORTATION AGENCY OF SAN FRANCISCO  
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318. Radios. MUNI will make every effort to see that each inspector will have a working radio.

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## **ARTICLE V - SCOPE OF AGREEMENT**

### **V.A. SCOPE OF AGREEMENT**

319. Savings clause. Should any part hereof or any provision herein be declared invalid by reason of conflict with a charter provision or existing ordinances or resolutions which the Board of Supervisors and/or the MTA Board of Directors had not agreed to alter, change or modify, or by any decree of a court, such invalidation of such part of portion of this CBA shall not invalidate the remaining portions hereof and the remaining portions hereof shall remain in full force and effect for the duration of the CBA.
320. This CBA sets forth the full and entire understanding of the parties regarding the matters herein. This Agreement may be modified, but only in writing, upon the mutual consent of the parties
321. Civil Service Rules & Administrative Code. Nothing in this Agreement shall alter the Civil Service Rules excluded from arbitration pursuant to Charter Section A8.409-3. In addition, such excluded Civil Service Rules may be amended during the term of this Agreement and such changes shall not be subject to any grievance and arbitration procedure but shall be subject to meet & confer negotiations, subject to applicable law. The parties agree that, unless specifically addressed herein, those terms and conditions of employment that are currently set forth in the Civil Service Rules and the Administrative Code, are otherwise consistent with this Agreement, and are not excluded from arbitration under Charter Section A8.409-3 shall continue to apply to employees covered by this contract.
322. As required by Charter Section A8.409-3, the Civil Service Commission retains sole authority to interpret and to administer all Civil Service Rules. Disputes between the parties regarding whether a Civil Service Rule or a component thereof is excluded from arbitration shall be submitted for resolution to the Civil Service Commission. All such disputes shall not be subject to the grievance and arbitration process of the Agreement.

### **V.B. DURATION OF AGREEMENT**

323. This Agreement shall be effective July 1, 2006 2007, and shall remain in full force and effect through June 30, 2007 2009.

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CBA BETWEEN THE MUNICIPAL TRANSPORTATION AGENCY OF SAN FRANCISCO  
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IN WITNESS HEREOF, the parties hereto have executed this MOU this \_\_\_\_\_ day of  
\_\_\_\_\_, 2006 2007.

FOR THE MUNICIPAL TRANSPORTATION  
AGENCY

---

Nathaniel P. Ford, Sr.  
Executive Director/CEO

---

Diana Buchbinder  
Acting Deputy General Manager  
Human Resources/Labor Relations  
Director, Human Resources

---

Vicki Rambo  
Sr. Departmental Personnel Officer  
Labor Relations Manager

---

APPROVED AS TO FORM:  
DENNIS HERRERA, CITY ATTORNEY

---

Elizabeth Salveson  
Chief Labor Attorney

FOR THE UNION

---

Hubert Snead  
International Vice President  
Transport Workers Union of America  
AFL-CIO

---

Steven Clark Glenda Lavigne  
President  
Transport Workers Union, Local 200

---

Kevin O'Neill  
Vice President  
Transport Workers Union, Local 200

---

Paulette Davis-Cooley,  
Executive Vice President  
Transport Workers Union, Local 200

---

Rudy Parson  
Secretary-Treasurer  
Transport Workers Union, Local 200

---

Executive Board Member

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## APPENDIX A

### MTA Performance & Attendance Incentive Program

The MTA Performance and Attendance Incentive Programs of this Appendix A apply only to employees in "service-critical" classes at MTA.

The benefits of these programs are only available to "service-critical" employees while employed at MTA. Employees who leave or transfer out of "service-critical" employment at MTA lose the benefits of these programs.

\*Note: Goal percentage requirements and effective dates in Appendix A are updated in July of each year. Such goals and effective dates will be published and also posted on the MUNI website.

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## **MTA PERFORMANCE INCENTIVE PROGRAM**

A Performance Incentive Program is established for “service-critical” employees at the Municipal Transportation Agency (MTA) in each of the following Occupational Groups:

- Maintenance Group
- Operations Group
- Administration Group

Service Standards are developed for each Occupational Group, and Performance Goals are established for each Service Standard. Service-critical employees responsible for achievement of Performance Goals are identified for each goal.

### **SERVICE STANDARDS**

The following Service Standards are established for each Occupational Group:

#### **MAINTENANCE GROUP:**

1. Percentage of vehicles that run on time according to published schedules.
2. Increase vehicle miles between road calls by mode.
3. Total number days of unscheduled absences.
4. Total number of lost days due to industrial injury/illness.

#### **OPERATIONS GROUP:**

1. Percentage of vehicles that run on time according to published schedules.
2. Percentage of scheduled hours delivered.
3. Total number days of unscheduled absences.
4. Total number of lost days due to industrial injury/illness

#### **ADMINISTRATION GROUP:**

1. Percentage of vehicles that run on time according to published schedules.
2. Total number days of unscheduled absences.

### **HOW PROGRESS IS MEASURED**

Performance Goals will be developed each fiscal year for the above listed Service Standards. For each Performance Goal, a Mode and/or Division Goal may be established. Progress toward achievement of these Performance Goals will be tracked and measured each fiscal year. A “Qualifying Fiscal Year” is defined as follows:

July 1, 2005 – through June 30, 2006

July 1, 2006 – June 30, 2007

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When Performance Goals are achieved, Incentive Bonuses will be paid to eligible employees in each Occupational Group at the end of a fiscal quarter during which goal(s) were achieved. A "Qualifying Fiscal Quarter" is defined as follows:

1. July 1, - September 30
2. October 1, - December 31
3. January 1, - March 31
4. April 1, - June 30

#### INCENTIVE BONUSES

Incentive Bonuses will be paid quarterly based on Occupational Group achievement of one or more of the Performance Goals established for each Service Standard. Separate bonuses will be paid based on achievement of overall Occupational Group Goals and/or Mode or Division Goals.

Incentive Bonuses will be paid to each eligible "service-critical" employee of an Occupational Group following a Qualifying Calendar Quarter during which a group goal(s) were achieved. Bonuses will be paid no later than sixty (60) calendar days following the end of a Qualifying Calendar Quarter during which group goals were achieved. Incentive Bonuses will be itemized and paid by check to each eligible group member, after deducting applicable federal and state taxes.

Incentive Bonuses shall not be considered as part of an employee's compensation for the purpose of computing retirement benefits.

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Incentive Bonuses will be paid to eligible “service-critical” employees based on the achievement of Occupational Group and/or Mode/Division Goals as follows:

### **OVERALL GROUP GOALS**

<b>Number of Goals Achieved</b>	<b>Quarterly Bonus</b>
Four (4) Group Goals achieved	\$150.00
Three (3) Group Goals achieved	90.00
Two (2) Group Goals achieved	60.00
One (1) Group Goals achieved	30.00

### **MODE/DIVISION GOALS**

<b>Number of Goals Achieved</b>	<b>Quarterly Bonus</b>
Four (4) Mode/Division Goals achieved	\$225.00
Three (3) Mode/Division Goals achieved	150.00
Two (2) Mode/Division Goals achieved	90.00
One (1) Mode/Division Goals achieved	60.00

### **ELIGIBLE EMPLOYEE CRITERIA**

To be eligible to receive payment of an Incentive Bonus, an employee must have actually worked a minimum of 400 hours in each Qualifying Fiscal Quarter, and not have sustained discipline of a suspension or higher. Authorized absences including vacation, legal holidays, and floating holidays shall be considered as “time worked” when computing actual hours worked.

### **GOAL MONITORING AND MEASUREMENT**

Performance Goals will be monitored, measured, and reported in the San Francisco Municipal Railway “Services Standards” Quarterly Report.

### **SENIOR MANAGEMENT AND SENIOR ADMINISTRATIVE CLASSIFICATIONS**

When more than one goal is achieved, the amount of Incentive Bonuses for “service-critical” senior level management and senior administrative classifications with multi-divisional or multi-mode responsibility will be determined by the General Manager in his/her sole discretion. Classifications so affected are identified for each goal.

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**MAINTENANCE GROUP PERFORMANCE GOALS****GOAL #1:**

To assure that vehicles run on time according to published schedules (no more than 4 minutes late or 1 minute early) measured at terminals and established intermediate points.

**OVERALL GROUP GOALS**

FISCAL YEARS	OVERALL GOAL	QUARTER GOALS
July 1 <u>through</u> , 2005— June 30, 2006 <u>of each Fiscal Year</u>	TBD %	
July 1, - September 30	TBD %	%
October 1, - December 31	TBD %	%
January 1, - March 31	TBD %	%
April 1, - June 30	TBD %	%

**MODE/DIVISION GOALS**

FISCAL YEARS	LRV	CABLE CAR	TROLLEY	DIESEL
<u>July 1 through, 2005— June 30, 2006 of each Fiscal Year</u>				
July 1, - September 30	TBD %	TBD %	TBD %	TBD %
October 1, - December 31	TBD %	TBD %	TBD %	TBD %
January 1, - March 31	TBD %	TBD %	TBD %	TBD %
April 1, - June 30	TBD %	TBD %	TBD %	TBD %

**GOAL #2:**

To increase vehicle miles between road calls by mode.

**MODE GOALS**

Quarter Goals	
(July 1, 2005— <u>through</u> June 30, 2006 <u>of each Fiscal</u> <u>Year</u> )	(July 1, 2006 <u>2008</u> — June 30, 2007 <u>2009</u> )
<b>MOTOR COACH:</b>	
Flynn-Artic	2000
Woods	2750
Kirkland	3000
	TBD
	TBD
	TBD
<b>TROLLEY COACH:</b>	

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Potrero Arctic	675	TBD
Potrero Standard	1000	TBD
Presidio	1250	TBD

**RAIL:**

Breda Light Rail Vehicle	3500	TBD
PCC	1250	TBD

<b>CABLE CAR:</b>	5500	TBD
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**GOAL #3:**

To reduce the total number days of unscheduled absences.\*

\*[Unscheduled Absences includes the following categories: Sick pay (with pay), Sick Leave (without pay), AWOL, Workers Comp, SDI, and Assault Pay.]

FISCAL YEARS	OVERALL GOAL	QUARTER GOALS
July 1 <u>through</u> , 2005 — June 30, 2006 <u>of each Fiscal Year</u>	TBD %	
July 1, - September 30	TBD %	
October 1, - December 31	TBD %	
January 1, - March 31	TBD %	
April 1, - June 30	TBD %	

**GOAL #4:**

To reduce the total number of lost days due to industrial injury/illness.

FISCAL YEARS	OVERALL GOAL	QUARTER GOALS
July 1 <u>through</u> , 2005 — June 30, 2006 <u>of</u> <u>each Fiscal Year</u>	TBD %	
July 1, - September 30	TBD %	
October 1, - December 31	TBD %	
January 1, - March 31	TBD %	
April 1, - June 30	TBD %	

**OPERATIONS GROUP PERFORMANCE GOALS****GOAL #1:**

To assure that vehicles run on time according to published schedules (no more than 4 minutes late or 1 minute early) measured at terminals and established intermediate points.

**OVERALL GROUP GOALS**

FISCAL YEARS	OVERALL GOAL	QUARTER GOALS
July 1 <u>through</u> , 2005— June 30, 2006 <u>of each Fiscal Year</u>	TBD %	
July 1, - September 30	TBD %	
October 1, - December 31	TBD %	
January 1, - March 31	TBD %	
April 1, - June 30	TBD %	

**MODE/DIVISION GOALS**

FISCAL YEARS	LRV	CABLE CAR	TROLLEY	DIESEL
<u>July 1 <u>through</u>, 2005— June 30, 2006 <u>of each Fiscal Year</u></u>				
July 1, - September 30	TBD %	TBD %	TBD %	TBD %
October 1, - December 31	TBD %	TBD %	TBD %	TBD %
January 1, - March 31	TBD %	TBD %	TBD %	TBD %
April 1, - June 30	TBD %	TBD %	TBD %	TBD %

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**GOAL #2:**

To assure that scheduled service hours are delivered and scheduled vehicles begin service at the scheduled time.

**MODE GOALS**

<b>Quarter Goals</b>					
(July 1, 2005 — <u>through</u> June 30, 2006 <u>of each Fiscal</u> <u>Year</u> )		(July 1, 2006 — June 30, 2007)			
<b>MOTOR COACH:</b>					
Flynn	TBD	%	TBD %		
Woods	TBD	%	TBD %		
Kirkland	TBD	%	TBD %		
<b>TROLLEY COACH:</b>					
Potrero	TBD	%	TBD %		
Presidio	TBD	%	TBD %		
<b>RAIL:</b>					
Green	TBD	%	TBD %		
Cable Car	TBD	%	TBD %		

**GOAL #3:**

To reduce the total number days of unscheduled absences.\*

\*[Unscheduled Absences includes the following categories: Sick pay (with pay), Sick Leave (without pay), AWOL, Workers Comp, SDI, and Assault Pay.]

**MODE GOALS**

<b>Quarter Goals</b>					
(July 1, 2005 — <u>through</u> June 30, 2006 <u>of each Fiscal</u> <u>Year</u> )		(July 1, 2006 — June 30, 2007)			
<b>MOTOR COACH:</b>					
Flynn	TBD	%	TBD %		
Woods	TBD	%	TBD %		
Kirkland	TBD	%	TBD %		
<b>TROLLEY COACH:</b>					
Potrero	TBD	%	TBD %		
Presidio	TBD	%	TBD %		
<b>RAIL:</b>					

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Green Cable Car	TBD %	TBD %
	TBD %	TBD %

**GOAL #4:**

To reduce the total number of lost days due to industrial injury/illness.

FISCAL YEARS	OVERALL GOAL	QUARTER GOALS
July 1 <u>through</u> 2005 — June 30, 2006 <u>of each Fiscal Year</u>	TBD %	
July 1, - September 30		TBD %
October 1, - December 31		TBD %
January 1, - March 31		TBD %
April 1, - June 30		TBD %

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**ADMINISTRATION GROUP PERFORMANCE GOALS****GOAL #1:**

To assure that vehicles run on time according to published schedules (no more than 4 minutes late or 1 minute early) measured at terminals and established intermediate points.

**ADMINISTRATION GROUP GOALS**

<b>FISCAL YEARS</b>	<b>OVERALL GOAL</b>	<b>QUARTER GOALS</b>
July 1 <u>through</u> , 2005 — June 30, 2006 <u>of each Fiscal Year</u>	TBD %	
July 1, - September 30	TBD %	
October 1, - December 31	TBD %	
January 1, - March 31	TBD %	
April 1, - June 30	TBD %	

**MODE/DIVISION GOALS**

<b>LRV</b>	<b>CABLE CAR</b>	<b>TROLLEY</b>	<b>DIESEL</b>
<b>FISCAL YEARS</b>	<b>OVERALL GOAL</b>	<b>QUARTER GOALS</b>	
July 1 <u>through</u> , 2005 — June 30, 2006 <u>of each Fiscal Year</u>	TBD %		
July 1, - September 30	TBD %		
October 1, - December 31	TBD %		
January 1, - March 31	TBD %		
April 1, - June 30	TBD %		

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**GOAL #2:**

To reduce the total number days of unscheduled absences.\*

\*[Unscheduled Absences includes the following categories: Sick pay (with pay), Sick Leave (without pay), AWOL, Workers Comp, SDI, and Assault Pay.]

<b>FISCAL YEARS</b>	<b>OVERALL GOAL</b>	<b>QUARTER GOALS</b>
July 1 <u>through</u> 2005 — June 30, 2006 <u>of each Fiscal Year</u>	TBD %	
July 1, - September 30		TBD %
October 1, - December 31		TBD %
January 1, - March 31		TBD %
April 1, - June 30		TBD %

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## EXHIBITS

### EXHIBIT A

The following “service-critical” Job Classifications are covered under Maintenance Group Goals #1, #2, #3 and #4.

CLASS	TITLE
7412	Automotive Service Worker Asst. Sup

### EXHIBIT B

The following “service-critical” Job Classifications are covered under Operations Group Goals #1, #2, #3 and #4.

CLASS	TITLE
9139	Transit Sup.
9140	Transit Manager I
9141	Transit Manager II
9150	Train Control Operator
9160	Transit Operations Specialist
<b>9520</b>	<b>Transportation Safety Specialist</b>
9173	System Safety Inspector

### EXHIBIT C

The following “service-critical” Job Classifications are covered under Administration Group Goals #1 and #2.

CLASS	TITLE
1773	Media Training Specialist
8121	Fare Inspections Supervisor/Investigator

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## MTA ATTENDANCE INCENTIVE PROGRAM

### (Non Transit Operator personnel)

The following Attendance Incentive Program is established for non Transit Operator, "service-critical" employees at the Municipal Transportation Agency (MTA).

This MTA Attendance Incentive Program is available to "service-critical" personnel in Groups A and B as indicated on Exhibits A and B, and is offered separate and apart from any Wellness or Sick Leave "cash out" program the City may offer. The benefits of this program are not vested, and are only available to employees while in active employment status at the MTA. MTA employees who take employment in other City departments lose the benefits of this program upon the effective date of such non MTA employment.

### ANNUAL SICK LEAVE "CASH OUT"/TIME OFF OPTIONS

If at the end of a "Qualifying Calendar Period" a full-time "service-critical" employee has not used more than a total of forty (40) hours (part-time "service-critical" employees twenty (20) hours) of sick leave, with or without pay, and or Disability Leave, and in addition has not been absent from work due to either Absence Without Leave (AWOL), leave without pay, or disciplinary suspension, may convert sick leave hours to "cash" or "time off" based on their accrued sick leave balance as shown below.

FULL-TIME	GROUP A	GROUP B
<b>QUALIFYING BALANCE</b>	<b>"CASH OUT"</b>	<b>TIME OFF</b>
240 hours or more sick leave balance	40 hours	3 days
PART-TIME	GROUP A	GROUP B
<b>QUALIFYING BALANCE</b>	<b>"CASH OUT"</b>	<b>TIME OFF</b>
120 hours or more sick leave balance	20 hours	2 days

Attendance Incentive Bonuses shall be paid to each qualifying employee no later than one (1) calendar month following the end of the Qualifying Calendar Period.

Employees in the groups eligible for the "time off" option shall be allowed to take their days off within ten (10) calendar months following the end of the Qualifying Calendar Period. The days off may be taken in single day increments or all at one time, subject to department/section scheduling.

NOTE: All sick leave hours "cashed out" or "taken off" shall be deducted from an employee's total sick leave balance, however sick leave hours "cashed out" or "taken off" shall not count towards the forty (40) hours of sick leave used during the "Qualifying Calendar Period" above.

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**QUALIFYING CALENDAR PERIOD**

For purposes of this Attendance Incentive Program a “Qualifying Calendar Period” is defined as follows:

July 1, 2005 2007 – June 30, 2006 2008  
 July 1, 2006 2008 -- June 30, 2007 2009

Sick leave hours “cashed out” shall be paid based on the employee’s “base hourly rate,” exclusive of any other premiums. The aforementioned incentive “cash out” premium shall not be considered as part of an employee’s compensation for the purpose of computing retirement benefits.

The following “service-critical” Job Classifications are covered under the “Cash Out” option of the Attendance Incentive Program.

**GROUP A**

CLASS	TITLE
7412	Automotive Service Worker Asst. Sup
9139	Transit Sup.
9140	Transit Manager I
9141	Transit Manager II
9150	Train Control Operator
9160	Transit Operations Specialist

**GROUP B**

The following “service-critical” Job Classifications are covered under the “Time Off” option of the Attendance Incentive Program.

CLASS	TITLE
1773	Media Training Specialist
8121	Fare Inspections Supervisor/Investigator
<b>9520</b>	<b>Transportation Safety Specialist</b>
9173	System Safety Inspector

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## APPENDIX B: PAST PRACTICES – MTA

1. Vacation sign ups shall be conducted by the end of January of each year for that calendar year unless important operational concerns require a delay. Seniority shall be based on date of hire with the City and County of San Francisco. When more than one employee has the same hire date with the City and County of San Francisco, the date of hire in the classification and the position on the civil service list shall determine the order for sign up.
2. Employees requesting 6<sup>th</sup> day of work on RDO will be given priority in the same group over employees requesting 7<sup>th</sup> day of work.
3. Coveralls will be provided to street inspectors upon request when required to work on or under vehicles.
4. Central Control Dispatchers will be entitled to one (1) forty five (45) minute break during an eight (8) hour shift. Breaks will be scheduled on the needs of service and staggered throughout the day.
5. Central Control Dispatchers will be entitled to one (1) twenty (20) minute break after each four (4) hours of overtime worked.
6. Central Control Dispatchers rotate their consoles on a weekly basis.
7. Employees returning to class 9139 from a promotive class will go in place on the relief board in their previous unit. The returning employee will maintain his/her sign up seniority if he/she returns within a one-year time limit.
8. Any time off work will be counted as a refusal to work overtime, for the purpose of computing overtime rotation.
9. Street Inspectors may have their mail delivered to their corners upon request.
10. Street Inspectors assigned MTA vehicles that are shared by more than one shift are allowed to leave their assigned districts fifteen (15) minutes early for travel time to return to the vehicle pool location.
11. Street Inspectors will be allowed to take break between calls, except during rush hours and delays, upon notification and approval of Central Control.
12. The duration of short term reassignments will be defined during the meet and confer process for sign ups and be included in the sign up bulletin.
13. In the Safety and Training Department the lead instructor for new operator classes will be rotated.

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14. Regularly occurring special assignments will be included as part of the shift details prepared for the sign up bulletin.

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## APPENDIX C

### EMPLOYEE ASSISTANCE PROGRAM AND PEER COUNSELING PROGRAM

Transport Workers Union Locals 250A and 200, Automotive Mechanics Local 1414, Teamsters Local 853, International Brotherhood of Electrical Workers Local 6, Laborers Union Local 261, Service Employees International Union Local 790, Stationary Engineers Local 39, and Glazier and Glass Workers, Local 718, and the Municipal Transportation Agency ("MTA") hereby agree to create an Employee Assistance Program as follows:

#### A. OVERVIEW OF EAP PROGRAM

This Employee Assistance Program ("EAP") shall cover employees only, and is designed to assist employees, in consultation with their families where clinically appropriate, with problems that may affect their ability to perform their jobs. The EAP shall offer counseling services, including assessment, referral, and follow-up services.

EAP's offer assistance by helping employees assess and identify problems arising from a variety of personal areas.

EAP's assist employees by referring them to services which lead to solutions.

EAP's provide training and consultation services to management and union leadership regarding assisting troubled employees.

The primary goal of the EAP will be to maintain employee's ability to be fully productive on the job. EAP's help employees, management, and supervisors maintain a high level of service by:

Motivating employees to help;

Helping supervisors identify troubled employees with job performance problems that may be related to personal problems;

Assessing employees with alcohol abuse, drug abuse, family problems, depression, stress and other problems that can result in performance problems;

Providing easily accessible quality helping services which include short-term problem-solving and referrals to more intensive care;

Providing crisis intervention services;

Providing follow-up assistance to support and guide employees through the resolution of their problems; and by

Acting as an education and training resource.

Employees shall be able to access the EAP through calling directly (self-referral), through the Peer Assistants, or through a supervisory referral based on job performance. Participation in the EAP is voluntary.

Establishing a voluntary EAP to compliment the mandatory testing program is intended to encourage employees to seek treatment early and on their own. The EAP will assist employees in

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obtaining information, guidance, and counseling to help them handle their problems before they become a drug testing or disciplinary issue.

An outside vendor has been selected and will perform the following duties:

- Maintain a toll-free telephone access for referrals and respond to calls in no more than sixty (60) seconds.
- Provide union/management consultation relative to the development and integration of organizational policies and procedures necessary for effective Employee Assistance Program implementation.
- Orient employees regarding the purpose, scope, nature and use of the Employee Assistance Program.
- Train Union (including Division Chairpersons and any other Union officials), supervisory and management staff to develop the knowledge and skills necessary to effectively utilize the program in the performance of their responsibilities.
- Provide direct one-to-one counseling utilizing licensed professional staff for crisis management and to identify and evaluate personal concerns among Employer's employees and/or their immediate dependents. Such direct counseling shall provide for three (3) sessions per family per year. Fees for any counseling sessions exceeding three (3) will become the financial responsibility of the employee and/or dependent, unless otherwise arranged for by the employer. For non-urgent situations, an appointment will be offered within seventy-two (72) hours of request. For urgent situations, an appointment will be offered on the same day as the request for service.
- Provide legal consultation, medical advice, financial consultation; one (1) consultation per incident is provided for each service, up to three (3) incidents per service, per year.
- Provide referral services to professional community resources for treatment and/or assistance, as may be appropriate.
- Provide continuing liaison and contact, when appropriate, between the employee, treatment agent or agency, and Employer to determine case status.
- Provide monthly statistical evaluation of program activity, and other reports, as needed.
- Send its principal or his designated representative to monthly meetings of the Municipal Railway Improvement Fund Board of Trustees, and any other meetings as reasonably required.
- Assess all employees involved in Critical Incidents (e.g., on the job assaults, threats and/or accidents) that occur while on duty.
- Provide up to three (3) counseling visits per employee involved in a Critical Incident.
- Develop Critical Incident Program Policies and Procedures.
- Provide Critical Incident Case management, including:

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- (a) Determination regarding an employee's ability to perform duties, including coordination with management and union personnel for employees who require time off work as a result of a Critical Incident.
- (b) Assisting employees in securing additional counseling visits beyond the three (3) Critical Incident/trauma response visits described above, when necessary.

## B. ORGANIZATION

### (1) The Joint Labor-Management Committee:

- (a) Membership and Meetings: Five (5) Committee members and two (2) alternate members to be appointed by the Unions. Five (5) Committee members to be appointed by the MTA.

If the MTA chooses to appoint less than five persons, it shall still have voting strength equal to that of the Unions. On the matters that come before the Committee, the MTA shall have one vote and the Unions shall have one vote. The vote of each side shall be controlled by the votes of the Committee members present for each respective side.

The Committee shall elect from its ranks a Chairperson and a Co-Chair, one of whom shall be a MTA appointee and the other the Unions' appointee. The Chair shall be held by one side for a year, then relinquished to the other side for the next year. Either the MTA or the Unions may replace their named Chair or Co-Chair at any time. The Chair shall preside over meetings of the Committee. In the absence of the Chair, the Co-Chair shall so preside. The MTA General Manager shall provide staff support to the Committee as appropriate.

A quorum for the transaction of business by the Committee shall consist of three (3) Union Committee members and a majority of the MTA-appointed Committee members.

- (b) Functions: To receive and review information regarding the Substance Abuse and Peer Assistance Programs.
- (c) Consolidation of Committees: The parties to this Agreement and to the Agreement concerning drug and alcohol testing and EAP between TWU Local 250A and the MTA may elect to combine the joint labor-management committee established here and in the Local 200A Agreement.

### (2) Substance Abuse Program:

The MTA General Manager or designee will manage all aspects of the FTA-mandated Substance Abuse Program. He/she shall have appointing and removal authority over all personnel working for the Substance Abuse Program personnel, and shall be responsible for the supervision of the SAP.

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(3) EAP Services:

The MTA and the Unions have concluded that it is in the best interests of all concerned to establish a uniform EAP Program for all employees. On this basis, the parties agree that the MTA shall engage an outside contractor to provide these services.

(4) The Peer Assistance System:

(a) Structure:

The outside contractor selected to provide EAP services shall also be directly responsible for the clinical and administrative management of the Peer Assistance Program. This Program shall be established on a 24-hour, seven-day-a-week basis. The peer assistants shall provide coverage during regular business hours (Monday - Friday, 8:30 a.m. - 5:00 p.m.) for all Muni work sites or sections. A system-wide EAP crisis hotline shall be established. Night weekend and holiday crisis coverage shall be provided by one of the peer assistants and shall be rotated among the peer assistants, who shall be available on a pager. The full compensation of the Peer Assistant providing such night, weekend and holiday coverage shall be pager pay. Pager pay will not be provided for regular daily coverage.

(b) Peer Assistance Oversight Committee:

This committee, composed of one representative from Locals 250A, 200, 6, 790 and 1414, shall be responsible for trouble-shooting and making decisions on program operations.

(c) MTA Liaison:

The MTA Liaison shall be an individual designated by the MTA General Manager to serve as the MTA's emissary in matters such as labor relations and administrative issues.

(d) Qualifications:

- A MUNI employee who has previous counseling experience or is interested in peer counseling and is willing to make a two year commitment to pursue training and education toward certification as a drug and alcohol counselor  
OR
- A MUNI employee who was a former substance abuser who has been clean and sober for at least two years and who continues to participate in a twelve step program  
OR
- A MUNI employee who has had experience with family members' substance abuse who had participated in a self-help group for co-dependency  
AND
- A MUNI employee who is respected by their peers, the union, and the management  
AND
- A MUNI employee who is committed to the goals of the Peer Assistance Program

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(e) Duties:

- Assist employees in accessing the Voluntary Substance Abuse Program and EAP.
- Provide on-going support and case management for clients in the Voluntary Substance Abuse Program.
- Abide by state and federal confidentiality laws.
- Publicize the EAP verbally and through distribution of literature.
- Provide employees with information regarding the EAP and Voluntary Substance Abuse programs and create a forum for employees to discuss their concerns.
- Assist in publication of Voluntary Substance Abuse Program newsletter.
- Seek out opportunities to participate in training programs to further develop knowledge and skills.
- Develop and implement new ideas to increase utilization and maximize the effectiveness of the EAP and Voluntary Substance Abuse Programs.
- Develop and maintain a professional environment in which to interact with clients.
- Develop a group of volunteers in the divisions to support the goals of the EAP and Voluntary Substance Abuse Programs.
- Assist in education and training sessions for new and existing employees.
- Keep accurate records of client contacts and promotional activities.

(f) Staffing:

There shall be a clinician employed by the outside contractor for EAP Services who will be on-site a minimum of 20 hours a week. The clinician shall report directly to the outside contractor, Peer Assistance Oversight Committee and the MIF liaison. There shall be three full-time Peer Assistants reporting to the outside contractor.

(g) Volunteer Peer Assistants:

1. Up to eight (8) Volunteer Peer Assistants.
2. Assist peer assistants upon request during their off-duty time.
3. They shall participate in designated training.
4. Their activities shall be within the limits of their training.
5. Volunteer peer assistants will receive no compensation for their services.

(h) Functions:

The outside contractor, in consultation with the Peer Assistance Oversight Committee, shall develop procedures for the Peer Assistance Program.

(i) Civil Service Commission Approval:

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The use of peer assistants shall be subject to the approval of the Civil Service Commission.

**C. PAY STATUS DURING VOLUNTARY SELF-REFERRAL TREATMENT (VOLUNTARY SUBSTANCE ABUSE PROGRAM)**

- (1) An employee who has a drug and/or alcohol abuse problem and has not been selected for drug and/or alcohol testing can voluntarily refer him/herself to the EAP for treatment. The EAP will evaluate the employee and make a specific determination of appropriate treatment. An employee who has completed two rehabilitation programs may not elect further rehabilitation under this program.
- (2) In the case of the up to two voluntary, employee-initiated referrals, the MTA will pay the employee the difference between his/her SDI benefits, use of accrued paid leaves, and any catastrophic illness benefits, and the employee's regular hourly base pay, for up to the eight hours per day for full-time employees and up to three hours per day for part-time employees, up to a maximum of 21 work days during a five-year period. This provision shall not apply in the event the employee does not receive SDI benefit payments or during the follow-up period established by the SAP after a positive test.

**D. NON-PAID STATUS DURING TREATMENT AFTER POSITIVE TEST**

The employee will be in a non-pay status during any absence for evaluation or treatment, while participating in a rehabilitation program.

**E. EDUCATION AND TRAINING**

The foundation of this Program is education and voluntary compliance. It is recognized that alcohol and chemical dependency may make voluntary cessation of use difficult, and one of the Program's principal aims is to make voluntary steps toward ending substance abuse easily available.

The outside contractor shall review and develop on-going educational and training information on the adverse consequences of substance abuse and the responsibility to avoid being under the influence of alcohol or chemicals at work. Certain training required by the DOT Regulations shall be the responsibility of the Substance Abuse Program.

**F. CONFIDENTIALITY**

Participation in the EAP shall be confidential and shall be conducted in accordance with DOT and DHHS standards.

**G. FUNDING**

The Employee Assistance Program and the Peer Assistance Oversight Committee shall be funded by the MTA.

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#### H. SPECIAL PROVISIONS

Any proposed discipline resulting from the FTA Drug and alcohol testing program shall be in accordance with the MOU's, as amended June 12, 1995. The MTA recognizes the rights of employees and/or the Unions, who may consider themselves aggrieved by any discipline proposed, to raise such grievance through the authorized grievance procedure. The MTA General Manager will act in a fair and equitable manner, and shall prescribe that no personnel hired, contracted, selected or directly involved in the drug and alcohol testing program shall propose or render discipline.

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CBA BETWEEN THE MUNICIPAL TRANSPORTATION AGENCY OF SAN FRANCISCO  
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**The Transport Workers' Union Local 200 Arbitration Award**  
**July 1, 2007 – June 30, 2009**

Pursuant to Proposition E, the Municipal Transportation Agency (MTA) entered into negotiations with The Transport Worker's Union Local 200 and bargained a separate agreement covering service critical employees at MUNI in 2005 which was reopened in 2006. That agreement expires June 30, 2007. The MTA began negotiations with The Transport Worker's Union Local 200 in February of this year. The parties were unable to reach agreement on all issues through negotiations and subsequently entered into mediation/arbitration. An arbitrator's decision was received on May 23, 2007. Following is a summary of the substantive changes to the existing agreement.

Redline CONTRACT SECTION	ITEM	TYPE/ACTION	DESCRIPTION
I. H.	Agency Shop	New Language	New language to set forth the process and requirements in how the Union collect Fair Share fee from employees.
II.C.	Assignment Of Work	Modified Existing provision	Revert language back to pre-2005 language pursuant to 2005-2007 CBA provision.
II. F.	Education and Career Development	Modified Existing provision	Added language to recognize the importance of Homeland Security and contingent upon Federal funding, security training will be given top priority.
III.A.	Wages	Modified Existing provision	Wage increase of 2% effective April 4, 2008 and 3.75% effective April 6, 2009
III. A.	Wages	New Language	Effective 7/1/07, a one-time internal adjustments of 2% for employees in 9140 Transit Manager I, 9141 Transit Manager II, and 8121 Fare Inspections Supervisor/Investigator.
III. C.	Additional Compensation	New Language	Commendable Attendance Payment – Pilot Program: Employees who worked 1880 hours (excluding overtime) and no discipline or suspension or higher in the previous fiscal year will be eligible for an annual payment of \$350 to be paid in October. The second year of the program will be contingent upon a 5% increase in the number of qualifying employees.
III.E	Holidays (Floating)	New Language	Employees may participate in a Floating Holiday "buy-back" program if they meet the eligibility requirement of no more than 40 hours of sick leave usage in the previous fiscal year.
V.B	Duration Of Agreement	Modified Existing provision	Term: July 1, 2007 through June 30, 2009



Local 200  
Labor Costing  
FY2007-08 and FY2008-09

TWU Local 200 Costing Analysis Summary							
	B FY06-07	C FY07-08	D FY08-09	F FY07-08	G FY08-09	H FY08-09	I Two-Year Actual Cost Increase (F+H)
	Base Cost	Total Cost	Total Cost	Increase vs. Base Cost (C-B)	Incremental Increase (D-C)	Increase vs. Base Cost (D-B)	
Salary and Internal Wage Adjustments							
Wage Increase -2% 4/5/08, 3.75% 4/04/09							
Salaries for 296.50 FTEs	\$ 26,046,527	\$ 26,176,760	\$ 26,686,295	\$ 130,233	\$ 639,768	\$ 770,000	
Fringe benefits (salary-related) @ 13.02%	\$ 3,391,258	\$ 3,409,214	\$ 3,474,556	\$ 16,956	\$ 83,298	\$ 100,254	
	\$ 29,437,785	\$ 29,584,974	\$ 30,160,850	\$ 147,189	\$ 723,066	\$ 870,255	
Wage Adjustments	\$ -	\$ 93,940	\$ 95,819	\$ 93,940	\$ 1,879	\$ 95,819	\$ 189,758
Fringe benefits (salary-related) @ 13.02%	\$ -	\$ 12,231	\$ 12,476	\$ 12,231	\$ 245	\$ 12,476	\$ 24,707
<b>Subtotal Salary and Wage Adjustments</b>	<b>\$ -</b>	<b>\$ 106,171</b>	<b>\$ 108,294</b>	<b>\$ 106,171</b>	<b>\$ 2,123</b>	<b>\$ 108,294</b>	<b>\$ 214,465</b>
Other Adjustments							
Commendable Attendance Pay							
Fringe benefits (salary-related) @ 13.02%	\$ 59,816	\$ 65,680	\$ 59,816	\$ 5,864	\$ 65,680	\$ 125,497	
<b>Subtotal Other Adjustments</b>	<b>\$ 7,788</b>	<b>\$ 8,552</b>	<b>\$ 7,788</b>	<b>\$ 764</b>	<b>\$ 8,552</b>	<b>\$ 16,340</b>	
<b>Total Cost</b>	<b>\$ 29,437,785</b>	<b>\$ 29,758,749</b>	<b>\$ 30,343,377</b>	<b>\$ 320,964</b>	<b>\$ 905,592</b>	<b>\$ 1,226,556</b>	

Note...Information is based on F/T2007-08 Proposed Salary Budget as of 5-23-07

1) Salary benefit of 13.02% is based on City Controller's assumption

2) Fringe benefit of 3.75% is based on City Controller's assumption

3) Paid-Jams and Alice, Internal Wage adjustment is a one-time deal for each year.

4) Per Human Resources, it is assumed that 51% of Local 200 members will

qualify for the Commendable Attendance Pay in FY2007-08 and 56% will qualify in FY2008-09



MUNICIPAL TRANSPORTATION AGENCY  
OF  
THE CITY AND COUNTY OF SAN FRANCISCO  
IN  
INTEREST ARBITRATION PROCEEDINGS  
PURSUANT TO CHARTER SECTIONS  
A8.409 and 8A104 (n)

Transport Workers Union, Local 200	/
Workers, AFL-CIO	/
Union	/
and	/
Municipal Transportation Agency	/
of the City and County	/
of San Francisco	/
Employer	/
	/

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OPINION AND AWARD

Board Members

Christopher D. Burdick:	Neutral Chairperson
Diana Buchbinder:	MTA Board Member
Glenda Lavigne:	Union Board Member

Appearances

On Behalf of The Union:

John Anderson and Scott DeNardo, Esqs.,  
Neyhart, Anderson  
Flynn & Grosboll,  
44 Montgomery Street, Ste. 2080,  
San Francisco, CA, 94104

On Behalf of MTA:

Martin Gran, Esq.,  
Deputy City Attorney  
1390 Market Street, 5<sup>th</sup> Floor,  
San Francisco, CA,  
94102

INTRODUCTION

The impasse between Transport Workers Union, Local 200 and the Municipal Transportation Agency of the City and County of San Francisco for MTA's so-called

“Service Critical Classifications” unit came on for interest arbitration hearings on May 6, 7, 17 and 19, 2007, at 1 South Van Ness Avenue, 7<sup>th</sup> Floor, San Francisco, pursuant to Sections A8.409 and 8A.104 (n) of the Charter (“Charter”) of the City and County of San Francisco (“City”). Christopher D. Burdick, an attorney at law and arbitrator/mediator, had been previously agreed upon by the parties to act as the neutral Chairperson of the Arbitration Board (“Board” – Charter Sec. A8.409.4 (b)). Diana Buchbinder, Human Relations Director of the Municipal Transportation Agency (“MTA” or “Muni”) of the City was selected by the Employer as its Board Member. Glenda Lavigne, President of Local 200 of the Transport Workers Union (“Local 200” or “The Union”), was selected by the Union as its Board Member. As noted above these two Board members in turn mutually agreed upon the appointment of Mr Burdick to chair the Board.

MTA was represented at the hearing by Deputy City Attorney Martin Gran, Esq. As described *infra*, the Union appeared specially at some of the hearings by John Anderson, Esq. and Scott De Nardo, Esq., of Neyhart, Anderson, Flynn & Grosboll, PC. A Certified Shorthand Reporter recorded the hearings of May 7, 17 and 19, and reference to those Transcripts hereinafter are made as, e.g., TR: \_\_\_ - \_\_\_.

The MTA offered into evidence on May 17 an Exhibit Binder and, ultimately, the Chair admitted into evidence, without objection, Tabs 1-36, of that binder, referred to hereinafter as, e.g., “Tab \_\_\_\_”. During the hearing, the parties and their counsel were afforded the full opportunity to present and call witnesses, to cross-examine the witnesses of the other party, and to present evidence and arguments in support of their positions. At the conclusion of the evidentiary hearing, the MTA argued the matter orally – the Union did not appear at this portion of the hearing and submitted no closing arguments – see *infra*. MTA waived the so-called “ten-day cooling off period” provided for in the Charter section A8.409-4 (e).

## I

### THE BARGAINING UNIT

The unit here in question consists of employees in ten (10) job classifications, the majority of whom are employed to supervise and manage subordinate vehicle operation and maintenance Muni classes, such as Transit Operator and Station Agent. The largest class in the unit is Transit Supervisor (Class 9139).

## II

### **PROCEDURAL SUMMARY**

Because the convoluted procedural history of the acts and positions of the parties before the conclusion of the evidentiary hearings is both unique and possibly integral to the ultimate binding nature of the Award set forth hereinafter, we detail with some particularity the events before the first day of evidentiary hearings on May 17.

A) Appointment of the Board. On March 19, 2007, the Chair wrote to the parties to confirm his previous, mutual appointment by Ms Lavigne and Ms Buchbinder as Chair of the Board (Tab 6, p. 2). On April 21 the Chair again wrote to the parties and set May 6 and 7, 2007 as the first two days of the hearing (Tab 6, p. 1).

B) Day One of the Proceedings. On May 6 (a Sunday) and pursuant to his authority under Charter Sec. A8.409-4 (d), the Chair devoted the entirety of that day to mediation, which proved to be unsuccessful. So, on Monday May 7, the Chair convened the Board in formal session to commence evidentiary hearings as required by the Charter.

C) Day Two of the Proceedings. At the start of the May 7 hearing, Union counsel advised that they and the Union were “appearing specially” only and set forth a length oral objection to the proceedings in their entirety, contending that the Board had not been timely appointed, that numerous time deadlines of the Charter had not been met, and that the entire Charter procedure for the arbitration of interest disputes (particularly as applied to MTA) violate certain provisions of the Meyers-Milias-Brown Act (Cal. Gov. Code Secs. 3500 et seq.) as “unreasonable rules and regulations”, and advised that the Union had (or would) file “unfair labor practice charges” (“ULPs”) against the MTA with the California State Public Employee Relations Board (“PERB”). The MTA argued that the Union’s contentions were specious and without basis and then asked that the Chair rule on what matters would be the subject of the evidentiary hearing, as MTA believed that under Sec. A8.409-4 (a) there was only a single item remaining in “.... dispute[] pertaining to wages, hours, benefits or other terms and conditions of employment which remain unresolved after good faith bargaining...”, namely wages.

The Chair directed MTA to file a written Motion in Limine (“Motion”), asked the Union to file a Reply thereto, and set Thursday, May 17 as the date to hear argument on

that Motion, decide it, and then deal with any remaining procedural disputes before starting to hear evidence.

D) The MTA Motion in Limine. The MTA Motion was directed at the TWU demand that the MTA revert back to a prior practice of "picking up" the employees' normal contribution to the City's Retirement System ("SFRS"—see pp. 7-8, *infra*) of approximately 7.5% of "compensation earnable" and stated in part:

By this Motion in Limine, the San Francisco Municipal Transportation Agency ("MTA") seeks a ruling from the Arbitrator that the issue of the 7.5% Employer Paid Member Contribution ("EPMC") is not properly at issue in this arbitration. The issue of the 7.5% EPMC is not at issue in this arbitration because it was not proposed at the bargaining table by either party, and the issue is, therefore, not an issue that "remains unresolved after good faith bargaining," as required by Charter section A8.409-4. The Arbitration Panel's authority is set by the Charter and only the Charter. Under the plain language of the Charter, EPMC is not properly before the Arbitration panel. In addition, strong public policy arguments support the conclusion that a party may not force the other party into binding arbitration over issues never raised at the table. Simply put, the integrity of the bargaining process demands that both parties bring their issues to the table, bargain in good faith over those issues, and abide by the deals they reach.

City Motion, Tab 20, at p. 1.

The Motion was supported by the accompanying Declaration of Diana Buchbinder, the MTA's Human Relations Director and a member of the MTA negotiating team, who described the various bargaining sessions and, in particular, the initial and mutual agreement of the parties to limit their bargaining proposals to twenty (20) proposals each and to stay within those limits as negotiations progressed. Ms Buchbinder declared under penalty of perjury and in pertinent part as follows:

On Tuesday, February 27, 2007, .... Local 200 .... and the MTA's management team met for the first time .... The Union proposed and the MTA agreed to limit the number of proposals to twenty (20) proposals for each side ... On Tuesday, March 6, 2007 .... Glenda Lavigne, President of TWU Local 200 representing the Union and Vicki Rambo, Labor Relations Manager for MTA representing management [met] and [o]n that date, the Union advanced twenty proposals covering wages and terms and conditions of employment; however none of these proposals dealt in any way with the 7.5% EPMC.

On Wednesday, March 14, 2007, the parties met [and] MTA advanced counter-proposals to a number of the Union's proposals. Oral agreement was reached on two of the union's proposals (security training and a fair share agreement). The union also withdrew a proposal at that time ... None of the MTA or the Union's proposals, counter-proposals, package proposals or signed tentative agreements address the issue of the 7.5% EPMC.

Bargaining continued on Wednesday, March 15, 2007 [and] [o]n Wednesday, April 4, 2007, the parties continued bargaining ... Tentative Agreements were reached on two of the Unions proposals. On Thursday, April 5, 2007, bargaining continued ... [and] MTA orally advanced a second package proposal that included counter proposals and previously "tentatively agreed to" items. Again, the issue of the 7.5% EPMC was not raised by either side.

On Tuesday, April 10, 2007, bargaining continued [and] MTA advanced a hard copy of its second package proposal. On Wednesday, April 11, 2007, bargaining continued ... [and] ...the Union agreed to the MTA package, including a wage proposal. After agreeing to the package, TWU's lead negotiator, Mr. [Hubert] Snead, stated that he assumed that MTA would resume picking up the 7.5% EPMC. The MTA stated that the retirement pick up was never discussed at the table and that neither side had advanced it as a proposal during negotiations. (The parties agreed to "swap" the EPMC for wages (7.5% EPMC for 7% wages) on an on-going basis, effective July 1, 2006. See Current MOU, MTA Exhibits, Tab 5.)

On Thursday, April 12, 2007, bargaining continued ... [and] ... MTA reasserted that the retirement pick up was never advanced as a proposal by either side and is not part of the MTA wage proposal. The Union asserted that there is a provision in the contract (paragraph 281) which it interpret to be a "me too" which would provide them with the MTA picking up the retirement contribution. The union asks the MTA representatives to "look into it."

Upon returning from caucus, the MTA advised the Union that the provision they are referring to contemplates retirement benefits and not retirement contributions and that fact was confirmed with the San Francisco Retirement Board. The MTA again reasserts that the retirement pick up was never a proposal and is not part of the package proposal offered by management.

The Union [then] stated that the parties had reached impasse since the issue of the 7.5% EPMC was the only thing left on the table. The Union asserted that the retirement issue would be the only item before the arbitrator. Management advised the union that its last offer was a package proposal and, therefore, without agreement on that package, all items contained in the package could be subject to arbitration under the Charter. The parties concluded negotiations and the Union filed a grievance with MTA senior management on the "me too" provision.

In sum, MTA contended that when the Union declared impasse, there was only one remaining unresolved issue on the table (wages) and that the Union had never raised or put on the table, directly or by implication, a demand that the City revert back to picking up the employee contribution to the SFRS.

E) The Union's Special Appearance and Response to the MTA Motion

Instead of replying to the MTA Motion on its merits, the Union elected to file a written "Special Appearance and Response" to the Motion. Tab 22. The Union memorialized the arguments and contentions it had made orally on May 7, stating as follows:

.... MTA .... claims that "[t]he [Interest] Arbitration Panel's authority is set by the [San Francisco City] Charter and only the Charter." *See*, MTA Brief, page 2. Under the plain language of the San Francisco City Charter, on January 1, 2007 the Arbitration Panel lost jurisdiction over any and all disputes related to the negotiation of the July 1, 2007 through June 30, 2009 collective bargaining agreement between Local 200 and the MTA.

.....

MTA does not dispute that the employees represented by Local 200 are subject to § A8.409, *et seq.* Charter § A8.409-4(e) states:

To be effective the beginning of the next succeeding fiscal year, agreement shall be reached or the [arbitration] board shall reach a final decision no later the sixty days before [MTA] is required to submit a budget to the Board of Supervisors, except by mutual agreement.

.... Pursuant to Charter § 8A.106 (a), the MTA's Budget must be submitted by the MTA to the Board of Supervisors on March 1, 2007 ... This means, as the MTA budget is required to be submitted by March 1 of the calendar year preceding the fiscal year for which the budget is submitted, all bargaining and/or any interest arbitration awards must be final by January 1 of the calendar year preceding the fiscal year for which the budget is submitted. *See*, Charter § A8.409-4(e).

Consequently, the arbitration panel lost its jurisdiction to issue a "final decision" on January 1, 2007. To the extent that MTA claims that there was a mutual agreement to "extend" any Charter time limits, no such interpretation may be placed on Local 200's actions as Local 200 was laboring under a mistake of law induced by representations of MTA and the City Attorney that the Charter provision time limits had not expired. Once Local 200's legal

counsel advised them that the time limits had in fact expired, Local 200 formed a decision not to go forward in arbitration and so informed MTA and Mr. Burdick of its decision before any arbitration commenced.

Finally, any resolution of the jurisdiction of the arbitration panel rests within the exclusive jurisdiction of PERB pursuant to Cal. Gov. Code § 3509.

Union Special Appearance, Tab 22, pp. 1-3.

In sum, the Union argued that, its appointment of a Board member and agreement to the selection of the Chair notwithstanding, the Board had lost jurisdiction (indeed, never had any) on January 1, 2007, several months before the parties even went to the table to bargain.

F) The Chair's Ruling on The Motion

On Thursday May 17, the Board met (*sans* Ms Lavigne, who did not appear, consistent with the position of her Union that the Board had lost [or never had] jurisdiction), heard oral argument from MTA on the Motion, and the Chair granted the Motion. The Chair concluded that the Board did not have the power or authority under the Charter or California general law to make fundamental decisions about its own jurisdiction; that the Board had been appointed in due course and in the usual manner (and at the usual times) under the Charter; that the Board , as a creature of the Charter and finding all of its powers and obligations set forth therein, had no choice but to proceed as the Charter requires; and that if the Union is correct in its contentions, it had its administrative remedies before PERB or civilly to petition to vacate the Award under the Arbitration Act (Cal. Code of Civil Proc., Secs. 1280 et seq.)

### III

#### BARGAINING HISTORY

The parties are signatories to an existing Memorandum of Understanding (“MOU”: Cal. Gov. Code Sec. 3505.1), with a term of July 1, 2006-June 30, 2007. Under some of their prior MOUs, the MTA had engaged in the so-called “employer paid member contribution” (or “EPMC”), under which MTA paid (or “picked up”) on each employee’s behalf those sums which the employee would have otherwise been required to pay to the City’s Retirement System (“SFRS”) as the employee’s “normal employee contribution”. This “pickup” results in substantial improvement in the employee’s take home pay, as the employee’s normal member contribution is generally paid with pre-tax

dollars, whereas the EPMC is paid directly to the System by the Employer, and the employee gets to keep, as wages, the contribution the employee would otherwise have been required by the Charter to make directly. The EPMC became a very common practice in public employment in the 1980's, and the Public Employees Retirement Law ("PERLA"; Cal. Gov. Code Sections 20000 et seq.) and the County Employees Retirement Act of 1937 ("The '37 Act"; Cal. Gov Code Sections 31450 et seq.) were both amended by the Legislature to authorize explicitly the ability of public employers to "pick up" the "normal employee contribution" otherwise payable by the systems' members.

But Section 280 of the parties' 2007-07 MOU provides that

Effective July 1, 2006, represented employees who are members of SFERS agree to pay their own employee retirement contribution in an amount equal to seven and one-half percent (7.5%) of covered gross salary...

That is, the Union had elected to engage in what the City and MTA call "The Swap", under which unions essentially have the choice of the EPMC and a 7% pay reduction, or the reverse, with the employees paying their own SFRS contribution and having their wages raised by 7%.

The parties did reach tentative agreement on the following matters, and the Award set forth below assumes (and is predicated upon) the understanding that MTA will implement these TAs as a part of the overall Award:

1) **BUYBACK OF FLOATING HOLIDAYS** -- Conditions of Eligibility:

Must not have used more than forty (40) hours of sick leave and/or workers compensation leave in the previous fiscal year. [use of 40 hours or less will still qualify]

No suspension.

A maximum of 5 FH per FY will be eligible for the buy back  
MTA will buy back the employees FH in the same year they are accrued.  
Employees in classification 9139 Transit Supervisor will indicate their  
buy-back option during the annual FH sign-up in June.

Other employees who do not have an annual floating holiday sign-up in June must notify MTA Human Resources/Attention: Labor Relations in writing by August 1st if they do not wish to participate in the buy back;  
Must be a current member of the bargaining unit at the time of buy back.

**Buy Back Process**

A list of eligible employees who meet buy back program requirement will be provided to the Union by September 1 of the payout year.

The union will review and sign off and return the finalized list to MTA Labor Relations by October 1<sup>st</sup>.

Labor Relations will submit the finalized list to MTA Payroll for processing in the first full pay period in November. MTA will provide a copy of the finalized list to the Union.

Buy back amount will be based on the FH balance at the time the buy back processing occurs

Floating holiday compensation is eight hours straight. There will be no carryover of FH from one FY to another.

- 2) **EDUCATION AND CAREER DEVELOPMENT** -- will add New language to Paragraph 127, as follows:

MTA Employees shall be offered a minimum of twenty (20) hours of job related training each year. Training will be at the discretion of the Appointing Officer. In recognition of the importance of Homeland Security and contingent upon availability of Federal funding, security training will be given top priority.

- 3) **INTERNAL ADJUSTMENTS** -- effective July 1, 2007, there shall be a one-time 2 % internal adjustment for employees in Class 9140 Transit Manager I, Class 9141 Transit Manager II and Class 8121 Fare Inspections Supervisor/Investigator.

- 4) **AGENCY SHOP** --the MTA will institute a fair share/agency fee program, as follows:

#### Application

For the term of the Agreement, all current and future employees of the MTA subject to the terms and conditions of this Agreement, except set forth below, shall, as a condition of continued employment, become and remain a member of the Union or in lieu thereof, shall pay an agency fee to the Union. Such agency fee shall not exceed the standard initiation fee, periodic dues and general assessments (hereinafter collectively termed membership fees) of the Union representing the employee's classification. The agency fee payment shall be established annually by the Union, provided that such agency shop fee will be used by the Union only for the purposes of collective bargaining, contract administration

and pursuing matters affecting wages, hours and other terms and conditions of employment, to the extent allowed by law.

#### Religious Exemptions

If an employee in a classification covered by this Agreement sincerely holds religious beliefs that include conscientious objections to joining or financially supporting a labor organization, the employee shall not be required to pay the service fee. In lieu of paying the service fee, the employee shall pay a charitable contribution equal to the service fee to one of the three following charitable organizations: (1) United Way of the Bay Area, (2) Community Health Charities of California (San Francisco/East Bay Branch), or (3) Local Independent Charities. The charitable contribution shall be paid in the amounts and at the times the service fee would otherwise be paid if the employee were not exempt under this paragraph. The employee shall provide the MTA and Union with an acknowledgement of receipt from the charitable organization or other satisfactory evidence that the charitable contribution has been paid.

#### Payroll Deductions

a. The Union shall provide the MTA Human Resources Director and the City Controller with a complete list of the classifications subject to this Section represented by the Union and a current statement of membership fees. Such list of represented classifications and statement of membership fees shall be amended as necessary. The Controller may take up to 30 days to implement such changes. The Controller shall make required membership fee or service fee payroll deductions for the Union. Each pay period, the Controller shall make membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each affected employee.

b. Effective with the first complete pay period worked by an employee newly employed and subject to this Agreement and each pay period thereafter, the Controller shall make membership fee or service fee and initiation deductions, as appropriate, from the regular payroll warrant of each such employee. Nine (9) working days following payday the Controller will promptly pay over the Union all sums withheld for membership or service fees.

c. The Union shall be entitled to collect, through the payroll deduction method, membership dues, and any special membership assessments, and through that system, may make changes as may be required from time-to-time. The Union shall give the Controller

appropriate written notice of any changes in existing deductions, or the establishment of new bases for deduction.

#### Service Fees

Service fees from nonmembers shall be collected by payroll deduction pursuant to Administrative Code Section 16.90. Failure to comply with this Section shall be grounds for termination. The Union, at its option, may elect to waive its right to demand termination and instead utilize judicial process to compel payment.

#### Employee Lists

The Controller shall also provide with each payment a list of employees paying service fees. All such lists shall contain the employee's name, employee number, classification, department number and the amount deducted.

If during the course of this agreement the Controller becomes capable of doing so, upon request by the Union, the MTA shall provide such list on computer diskette or other electronic medium. All reasonable costs associated with such request shall be paid to the MTA by the Union.

A list of all employees in represented classes shall be provided to the Union monthly. Nothing in this Section shall be deemed to have altered the MTA's current obligation to make insurance program or political action deductions when requested by the employee.

#### Financial Reporting

Annually, the Union will provide an explanation of the fee and sufficient financial information to enable the service fee payer to gauge the appropriateness of the fee. The Union will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker not chosen by the Union and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.

#### Indemnification

The Union agrees to indemnify and hold the MTA and the City harmless for any loss or damage arising from the operation of this section.

#### New Hires

The MTA agrees to provide the Union with the names and classifications of newly hired employees on a quarterly basis. The MTA will provide such new employees with information regarding the Union and agency shop.

Data

The MTA will provide the Union the following data, for each employee in the covered classifications, on a quarterly basis within legal and reasonable administrative constraints.

1. Name;
2. Employee Number;
3. Current Classification.

Upon written request, the MTA agrees to provide to the Union, on an annual basis, gender information by job classification.

The Union shall comply with the requirements set forth in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) for the deduction of agency shop fees. Annually, the Union shall certify in writing to the City that the content of the written notice meets the requirements set forth in this section and in *Hudson*.

- 5) **COMMENDABLE ATTENDANCE PAYMENT – PILOT PROGRAM** -- Effective, July 1, 2007, employee(s) covered by this CBA who meet all of the requirements of the Commendable Attendance Pilot Program will be entitled to an annual payment of \$350 if they meet the eligibility requirements as follows:

Employees must actually have worked 1880 hours, exclusive of overtime hours, in the previous fiscal year (2006 -- 2007).  
Must have no discipline of a suspension or higher during the previous fiscal year  
Must be currently employed in the bargaining unit at time of payout, or, employees who separate from city service after July 1 but before the October pay out and who separate with services satisfactory, shall receive their payment by mail. Employees must provide a valid mailing address at time of separation.  
Payment to take place the second full pay period in October 2007.

This is a pilot program. Continuation into 2008 is contingent upon a 5% annual increase in the number of qualifying employees.

Note: The 1880 hours will include following: Regular scheduled work hours, Legal Holidays, Jury duty, and Military leave

- 6) **HOLIDAYS AND HOLIDAY PAY** -- Floating Holidays. In addition to the holidays listed herein, the employees covered by this CBA will receive five (5) floating holidays. Only employees working a Normal Work Schedule, as described in Article III.B., will receive five (5) floating holidays. The five (5) floating holidays may be taken on days selected by the employee subject to prior scheduling approval of management. Employees must complete six (6) months continuous MTA service to establish initial eligibility for the five (5) floating holidays. The five (5) floating holidays may not be carried forward from one fiscal year to the next. No compensation of any kind shall be earned or granted for the five (5) floating holidays if not taken off except as set forth below. The five (5) floating holidays shall not be considered holidays for purposes of calculating holiday compensation for time worked  
Effective July 1, 2007 employees will be eligible to participate in a buy back of their Floating Holidays if they meet the following conditions:  
If at the end of the "Qualifying Period" defined as the previous fiscal year, a full-time employee who has not used more than forty (40) hours of sick leave, with or without pay, and or Disability Leave, and in addition has not been absent from work due to a disciplinary suspension may convert floating holiday hours to "cash". The payout will be considered earnings for the purposes of retirement calculations. Floating holiday compensation is eight hours straight.

7) **DURATION OF AGREEMENT** -- This Agreement shall be effective July 1, 2007, and shall remain in full force and effect through June 30, 2009.

The Chair concludes that the bargaining history was accurately set forth by Ms Buchbinder in her Declaration, as described above, and that when impasse was declared by the Union the only disputed issue on the table was wages, with the Union laboring under the impression (or misimpression, as the case may be or as the viewer sees it) that the MTA was going to revert back to picking up the employee contribution to SFRS, a demand never made by the Union at the table. The Chair notes with concern the unrebutted testimony that the Union never once presented a single piece of salary data, CPI studies or any other documentation or arguments across the table to the Employer to justify its demands for salary increases. Instead, what appears to have happened is that the parties simply engaged in a give-and-take of proposal and counter-proposals on wages, with the Union never explaining why it wanted what it was asking for or what

data justified it, while the MTA continued to support its proposals by pointing to the pattern of other MOUs at MTA and the City.

## IV

### THE DISPUTED ISSUE AND THE LAST, BEST AND FINAL OFFERS OF THE PARTIES THEREON

It is unclear exactly what the Union's actual wage demand was, as when it declared impasse, it had told MTA that it would accept the MTA wage proposal contingent upon reversion to the 7.5% EPMC by the MTA.

#### MTA PROPOSAL

**Wages:** MTA will increase wages for all classes in the unit by Two Percent (2%) effective April 5, 2008 and by an additional Three and Three-Quarter Percent (3.75%) effective April 4, 2009, with the MOU to terminate on June 30, 2009.

#### UNION PROPOSAL

**Wages:** MTA to increase wages for all classes in the unit by Two Percent (2%) effective April 5, 2008 and by an additional Three and Three-Quarter Percent (3.75%) effective April 4, 2009, and MTA shall revert back to the *status quo ante*, by "picking up" the employee's normal retirement contribution of 7.5%, with the MOU to terminate on June 30, 2009.

## V

### CONTENTIONS OF THE PARTIES

MTA: MTA's final offer is consistent with increases in the cost-of-living and with the FY 2007-09 wage increases contained in MTA and City MOUs reached with almost every other union participating in last year's negotiations. The EPMC was never put on the table by the Union, and, in any case, existing City and MTA practices with practically every other union warrants these employees picking up their own 7.5% retirement contributions. Almost every union with CITY or MTA contracts negotiated under A8.409 and 8A.104 in 2006 reached agreement on ending the EPMC in FY 07-08, and only SEIU, IFPTE Local 21, and the Probation Officers and a few other small unions have not done so. "Ability to pay" is not an issue raised by MTA but the Union never

presented any arguments or data at the bargaining table to support a higher wage increase for this unit than for others in the City or at MTA.

THE UNION: Because the Union did not participate in the evidentiary hearing, the Board has no idea what arguments it has to support its position and could only speculate thereon, which it declines to do

## VI

### RELEVANT CHARTER PROVISIONS

Under the Charter, unresolved differences in negotiations between MTA and a recognized employee organization which persist to the point of impasse are submitted to final and binding interest arbitration, to be heard and decided by a three-member board. MTA appoints one member thereto, the union appoints its member, and those two members select a third, neutral person to chair the board.

Charter Section A8.409 requires the arbitration board to decide each issue in dispute by

“selecting whichever last offer of settlement on that issue it finds by a preponderance of the evidence submitted during the arbitration most nearly conforms to those factors traditionally taken into consideration in the determination of ages, hours, benefits and terms and conditions of public and private employment, including, but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms of conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of the employees in the city and county of San Francisco; health and safety of employees; the financial resources of the city and county of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst for the board of supervisors; other demands on the city and county's resources including limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenues by enhancements or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the arbitration board.”

In addition, Article VIIIA of the Charter, dealing with the creation and operation of the MTA, requires, in section 8A104 (n), that the Board also consider “the interests and welfare of transit riders, residents, and other members of the public [and] the

Agency's ability to meet the costs of the decision of the arbitration board without materially reducing service".

This Charter interest arbitration system is referred to in the labor world as "issue-by-issue, baseball arbitration." The Charter's arbitration board may only select the offer on each disputed issue made by one party. The Board may not modify or alter, to its choosing, any proposal, but may approve only one of the competing proposals on each subject still at impasse. Here, as noted above, there is really only one issue to be resolved – wages.

## VII

### **THE HEARING TESTIMONY AND EVIDENCE**

MTA bore the burden of persuasion on its wage proposal, and to that end it called two witnesses thereon, Sonali Bose ("Bose"), MTA's Chief Financial Officer ("CFO") and Geoffrey Rothmann ("Rothmann"), the City's retired Director of Employee Relations and now an employee of the law firm of Renne, Sloan, Holtzman & Sakai.

Bose introduced MTA's 2007-2008 Proposed Operating Budget (Tab 26) and went through that document for the Board. In sum, and to simplify because "ability to pay" is not here an issue, MTA operates under a chronic structural deficit of about \$150 million, which grows annually due to the loss of water revenues from the PUC, and so has failed to meet Prop. E mandates for service due to chronic infrastructure problems, a lack of staff, requirements for new vehicles, and ongoing repairs and maintenance. To the extent MTA relies in part on the State for funds, and the State's 2007-08 budget is extremely unsettled and uncertain, Bose can only count on \$18 million from the State rather than the budgeted \$36 million, but she hopes to get \$700,000.00 from MTC. Bose predicts a budget shortfall for FY 2008-09 of \$57.7 million. Muni gets only about 20% of its revenue from the fare box, whereas most systems get about 33%, and thus the entire SF system is heavily subsidized by non-riders.

Rothmann testified that, based upon current data from the Bureau of Labor Statistics of the US Department of Labor, the Consumer Price Index for FY 2006-07 ran at about 3.2%. Rothmann explained Tab 32, a salary survey of like and comparable transit agencies in the San Francisco Bay Area which the parties have traditionally used when "comparability" was an issue. This data showed that every class in the bargaining

unit was above (and in certain classes, well above) the average, the median and the mean of surveyed jurisdictions for FY 2006-2007.

MTA also called Vickie Rambo (“Rambo”), MTA’s Labor Relations Manager, who testified orally to the same bargaining history that Buchbinder had outlined in her Declaration, *supra*. Rambo attended every bargaining session between the parties and confirmed that the Union had never once put the EPMC issue on the table, and so she and her team were shocked when Mr Snead brought the matter up as a parting aside at the end of the meeting on April 11. Rambo also testified that the present salary differential between the Local 250 class of Transit Operator (9163) and Transit Supervisor (9139) today is about 49.42%, a substantial increase over the last few years in favor of the Local 200 represented class.

## VII

### THE BURDEN OF PROOF AND PERSUASION

MTA concedes that, as the party urging a departure from the contractual *status quo*, it bears the burden of proof and persuasion. Given the refusal of the Union to participate in the hearing, this was not a substantial burden to carry.

## VIII

### ANALYSIS AND APPLICATION OF THE CHARTER CRITERIA TO THE EVIDENCE

#### **1. Consumer Price Index.**

The MTA proposal was supported by past and projected increases in the CPI, as testified to by Mr Rothmann. The wage increases proposed by MTA should keep the classes in step with increases in the CPI..

#### **2. Wages, hours, benefits and terms and conditions of employment of employees performing similar services.**

This factor looks to the “prevailing rates” paid, and the terms and conditions maintained, by other employers (both public and private) for their employees performing like or similar work. MTA made an unrebutted evidentiary showing that its proposal was supported, in whole and in part, by prevailing rates and practices in the Bay Area transit

community and would continue these job classes at a position above the average and the median under the MTA wage proposal here.

**3. The wages, hours, benefits, and terms and conditions of employment of other employees in the City and County of San Franciseo.**

This element looks to what the City pays (and how it treats) its other employees, regardless of whether those workers perform like or similar work. The evidence on this point presented by the MTA was a chart (Tab 35) showing that a majority of MTA and City unions had agreed in 2006 to accept the same wage increases (or a variation on the them, with slightly different percentages implemented at different dates but which "cost" the Employer the same).

**4. Health and Safety of employees.**

There was no evidence submitted that indicated that the imposition of MTA's proposal would alter the existing health and safety in the workplace.

**5. The financial resources of the city and county of San Franciseo, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst of the board of supervisors.**

Ms Bose's testimony indicates that MTA continues to operate in an uncertain and fluctuating economic state, with built-in structural deficits and projected shortfalls in funding from the State. The MTA did not advance ability to pay as a basis for its proposals.

**6 Other demands on the City and County's resources, including limitations on the amount of revenue and expenditures**

There was no testimony in this area.

**7. Revenue projections.**

As described above, the unrebutted testimony is that the projected stream of unencumbered general fund (and dedicated special purpose) revenues for FY 2007-2008 is problematic and there was no evidence that there exist alternate, untapped sources of income to which MTA could look to generate revenues to bridge the gap between the anticipated shortfall between expenditures and income.

**8. The power to levy taxes and raise revenue by enhancement or other means.**

No evidence was presented in this area. The Chair notes that, as a general matter in California, Propositions 13 and 218 severely limit options to raise taxes and the likelihood of a significant tax increase is minimal at best

**9. Budgetary reserves.**

Ms Bose testified that the projected reserve set forth at page 5 of Tab 27 of a year end reserve of \$11.3 million at the end of FY 2007 has since been adversely impacted by three recent tort verdicts/settlements totaling about \$12 million, and so any reliance on reserves would be unwarranted. The Board recognizes there are no readily available reserves to fund the Award but does not believe that such reserves are needed to do so.

**10. The City's ability to meet the costs of the decision of the arbitration board  
(Charter section A8.409-4(d)) and MTA's ability to meet the costs of the award  
without materially reducing service (Charter section 8A.104(n)).**

As noted above, MTA did not contend that it could not fund the costs of implementing its LBFO.

**11. The interest and welfare of transit riders, residents, and other members of the public. Charter 8A.104 (n).**

The Board believes it is in the best interest of the public to resolve disputes between the parties by the Charter's arbitration process and not by the boycott and legal challenge course of action adopted by the Union.

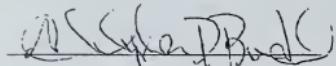
## APPLICATION OF THE CHARTER CRITERIA TO THE SOLE ISSUE AT IMPASSE

The Board finds that the proposal of MTA most nearly conforms to the mandatory Charter criteria the Board must apply in selecting one of two competing proposals. The Board therefore accepts the MTA proposal and rejects that of the Union. For FYs 2007-09, and in the absence of any evidence to the contrary from the Union, the CPI and the prevailing rates/practices of other transit agencies and within other MTA and City units are here persuasive.<sup>1</sup>

The persuasive Charter criteria here are (1) what other transit agencies are paying their comparable employees; (2) prevailing wages and benefits within MTA and the City; (3) the CPI; (4) the financial state of MTA; and (5) the interests of riders and the public.

### AWARD

The MTA proposal is accepted. The Union proposal is rejected. Member Buchbinder concurs. Member Lavigne did not participate.

  
Christopher D. Burdick, Neutral Chair

DATED: May 3, 2007

  
Diana Buchbinder, MTA Member

DATED: May 11, 2007

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Glenda Lavigne, Union Member

DATED: May , 2007

<sup>1</sup> This is in marked contrast to the result the Chair reached in a similar dispute between the parties in 2004, where the Union actively participated in the hearing, vigorously cross-examined MTA witnesses to great effect, put on a strong and persuasive evidentiary case of its own justifying differential treatment and a departure from the "pattern settlements approach" urged that year by the City and MTA.



